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In the Supreme Court of the United States

OCTOBER TERM, 1996

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

AMERICAN CIVIL LIBERTIES UNION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 96-CV-963

AMERICAN CIVIL LIBERTIES UNION, ET AL., PLAINTIFFS

v.

JANET RENO, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
2/8/96	1	COMPLAINT. Filing fee $120. Receipt #581198 (td)
2/12/96	7	TRANSCRIPT of Temporary Restraining Order Hearing on 2/8/96. (jo)
2/15/96	12	ORDER that pursuant to the provisions of 28 U.S.C. Section 2284. I designate the Honorable Dolores K. Sloviter, United States Circuit Judge, and the Honorable Stewart Dalzell, United States District Judge for the Eastern District of Pennsylvania, to sit with the Honorable Ronald L. Buckwalter, United States District

Judge for the Eastern District of Pennsylvania, as members of the court for the hearing and determination of the above captioned matter. (Signed by Honorable Dolores K. Sloviter, Chief Judge Third Judicial Circuit) 2/15/96 entered and copies mailed. (jo) [Edit date 02/15/96]

2/15/96 14 ORDER that plaintiffs' motion for a temporary restraining order is granted in part as follows: the defendant, her agents and her servants are hereby enjoined from enforcing against plaintiffs the provisions of 47 U.S.C. Section 223(a)(1)(b)(ii), insofar as they extend to "indecent" but not "obscene". The plaintiffs' motion is in all other respects, denied. Unless previously ordered by this court, pursuant to 28 U.S.C. Section 2284(b)(3) this order shall remain in force only until the hearing and determination by the district court of three judges of the application for a preliminary injunction. (Signed by Judge Ronald L. Buckwalter) 2/16/96 entered and copies mailed. (jo) [Entry date 02/16/96]

2/16/96 15 MOTION by plaintiffs for preliminary injunction, certificate of service. (ag) [Entry date 02/20/96]

2/27/96 21 ORDER, that pursuant to FED.R. CIV.P. 42(A), these actions (96-963 and

96-1458) shall be consolidated for all matters relating to the disposition of motions for preliminary injunction in these cases, including the hearing on such motions. (Signed by Judge Stewart Dalzell), 2/28/96 entered and copies mailed. (ag) [Entry date 02/28/96] [Edit date 02/28/96]

3/12/96 30 EXHIBITS by MOVANT AMERICAN LIBRARY ASSOCIATION, INC. Plaintifffs' to motion for a preliminary injunction. (2 volumes), certificate of service. (ag) [Entry date 03/13/96]

3/20/96 49 The parties stipulations in preparation for the preliminary injunction hearing. (ag)

3/22/96 56 Minute entry dated 3/21/96 re: civil trial (day one). All parties present. Plantiffs witnesses called and sworn. (ag) [Entry date 03/25/96]

3/22/96 57 Minute entry dated 3/22/96 re: Civil trial (day two); All parties present. Plaintiffs witnesses called and sworn. (ag) [Entry date 03/25/96]

4/2/96 72 Minute entry dated 4/1/96 re: civil trial day three continues. (ag)

4/15/96 83 Minute entry dated 4/15/96 re: Civil non-jury trial. Government's witness:

Dr. Dan Olson, prev. sworn. The govt. proffers the exhibits it seeks to move into evidence, etc. (ag) [Entry date 04/16/96]

4/23/96 90 ANSWER to Complaint by DEFENDANT JANET RENO (Attorney CRAIG M. BLACKWELL), certificate of service. (td) [Entry date 04/24/96]

6/12/96 125 ADJUDICATION AND ORDER that plffs' motions for preliminary injunction are granted; deft. Attorney General Janet Reno, and all acting under her direction and control, are preliminarily enjoined from enforcing, prosecuting, investigating or reviewing any matter premised upon: (a) Sections 223 (a)(1)(b) and 223 (a)(2) of the Communications Decency Act of 1996 ("the CDA"), Pub. L. No. 104-104, 502, 110 Stat. 133, 133-36, To the extent such enforcement, prosecution, investigation, or review are based upon allegations other than obscenity or child pornography; and pursuant to FED. R. CIV.P. 65(c), plffs need not post a bond for this injunction, etc.; And the parties shall advise the court, in writing, as to their views regarding the need for further proceedings on the later of (a) thirty-one days from the date of this order, or (b) ten days after final appellate review of this order. (Signed by Chief Judge Dolores K.

Sloviter, Judge Ronald L. Buckwalter and Judge Stewart Dalzell) 6/12/96 entered and copies mailed. (mc) [Edit date 06/12/96]

6/26/96 126 UNOPPOSED MOTION by defendant janet reno for clarification of preliminary injunction pursuant to Rule 60, memorandum, certificate of counsel, certificate of service. (jo) [Entry date 06/27/96]

6/28/96 127 ORDER that defts unopposed motion for clarification and amendment of preliminary injunction pursuant to Rule 60 is GRANTED and it is further ORDERED that paragraph 2(a) of this court's order dated 6/11/96 is hereby clarified as follows: defts are enjoined from enforcing, prosecuting, investigating or reviewing matters premised upon 47 U.S.C. Section 223(a)(2) only with respect to the prohibited activities specified in Section 223(a)(1)(b) as they relate to "indecent" communications. Defts are not enjoined from enforcing, prosecuting, investigating or reviewing allegations of violations of Section 223(a)(2): based on prohibited activities specified in Section 223(a)(1)(A), (C), (D) OR (E); or based on prohibited obscenity or child pornography activities as specified in Section 223(a)(1)(B). The court's preliminary injunction order entered 6/12/96 is

unchanged in all other respects. This clarification order shall not extend the date of the entry of the preliminary injunction order for purposes of the preliminary injunction order pursuant to Section 561(b) of the Telecommunications Action of 1996, Pub. L. No. 104-104, Section 561 (b), 110 Stat. 143 (signed by Judge Ronald L. Buckwalter, Dolores K. Sloviter, Stewart Dalzell) 6/28/96 Entered and copies faxed and mailed. (td) [Edit date 06/28/96]

7/1/96 128 NOTICE OF APPEAL to U.S. Supreme Court by DEFENDANT JANET RENO. Copies to: Judge Ronald L. Buckwalter, Clerk USCA, Appeals Clerk, and Bruce J. Ennis Jr., Bruce A. Taylor, Cathleen A. Cleaver, James Henderson Sr., Colby M. May, Jay Alan Sekulow, L. Theodore Hoppe Jr., James D. Crawford, Andre L. Dennis, Ronald P. Schiller, Stewart Dalzell, Marjorie Heins, Ann Elizabeth Beeson, Michael Godwin, Marc Rotenberg, David L. Sobel, Dolores K. Sloviter, Mary E. Kostel, Patricia M. Russotto, Theodore C. Hirt, Jason R. Baron, Anthony J. Coppolino, R. Kmetz, Laura Abel, Christopher A. Hansen, Stefan Certificate of Service. (jo) [Edit date 07/02/96]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 96-CV-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.,
PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
2/26/96	1	COMPLAINT for declaratory and injunctive relief. Filing fee $120. Receipt #582610. (td) [Edit date 02/26/96]
2/27/96	4	ORDER, that pursuant to FED.R. CIV.P. 42(a), these actions (96-963 and 96-1458) shall be consolidated for all matters relating to the disposition of motions for preliminary injunction in these cases, including the hearing on such motions. (Signed by Judge Dalzell), 2/28/96 Entered and copies mailed. (ag) [Entry date 02/28/96] [Edit date 02/29/96]

VIII

4/23/96 22 ANSWER by U.S. DEPT OF JUSTICE, JANET RENO, HEALTH SCIENCES LIBR, INTERACTIVE DIGITAL, MAGAZINE PUBLISHERS, THE MICROSOFT NETWOR, NATIONAL PRESS PHOTO to first amended complaint, Certificate of Service. (gn) [Entry date 04/24/96]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

CIV. A. NO. 96-0963

AMERICAN CIVIL LIBERTIES UNION, ET AL., PLAINTIFFS

v.

JANET RENO, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
DEFENDANT

CIV. A. NO. 96-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.,
PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
DEFENDANTS

DECLARATION OF HOWARD A. SCHMIDT

I, Howard A. Schmidt, hereby state and declare and present the following sworn direct testimony in this action as follows:

1. I am currently a Supervisory Special Agent, Director of the Air Force Office of Special Investigations ("OSI"), Computer Crime Investigations. I have served at OSI since September 1994 and have been

Director of Computer Crime Investigations since January 1995. In this capacity, I manage the Air Force OSI Investigative Operations Center, Computer Crime Division, at Bolling Air Force Base in Washington, D.C. The Office of Special Investigations undertakes investigations related to criminal and counter-intelligence matters for the United States Air Force and Department of Defense. OSI also assists a range of Federal, State, and local law enforcement agencies, such as the Department of Justice, the Federal Bureau of Investigation, the U.S. Customs Service, the U.S. Postal Service, the U.S. Secret Service, and other military investigative agencies, in connection with various types of criminal/counter intelligence investigations. The Computer Crime Investigation Division is specifically concerned with computer intrusion investigations and computer forensics. The latter mission concerns obtaining evidence contained on or available through computer systems. I have previously testified as an expert witness in a military criminal proceeding on the collection and preservation of computer evidence. I am a regular instructor for the National White Collar Crime Center in West Virginia, the FBI Academy in Quantico, Virginia, the Air Force OSI Academy at Andrews Air Force Base, Maryland, as well as for various other Federal, state, and local, and international law enforcement agencies. I teach courses on the collection and preservation of computer evidence, and conducting investigations in a computer environment. A fuller biographical statement is attached at Exhibit 1.

2. I am an expert in computer investigatory matters, including computer forensic procedures—the process for determining whether a computer has been

used as an instrumentality to commit a crime (for example "hacking" into another computer), or used to store information that may be evidence in a criminal investigation. My expertise also includes an understanding of computer operating systems, such as DOS, Macintosh, OS2, and Microsoft Windows, as needed to carry out my investigative duties.

3. My investigatory experience specifically includes multiple investigations that concerned the online transmission of sexually explicit materials through computers, including distribution and possession of child pornography as well as the range of other types of sexually explicit material. Throughout my career both at OSI and in prior local and Federal law enforcement positions, I have been involved in approximately 30 to 50 such investigations, either as an actual investigator, or a supervisor to other investigators, or as a consultant to another Federal, state, or local law enforcement agency whose agents were conducting the actual investigation. I estimate that in at least 70% of these cases I was personally involved in investigating where sexually explicit materials can be located through online computer searches, including on Internet Web sites, newsgroups, and Bulletin Board Systems (BBS).

4. In general, my investigative actions fall into two major categories: I have searched Internet sites or BBS sites to determine the location of a particular graphical image that had been provided to me for investigation. Alternatively, I have often been asked to search among Internet sites to locate specific sites and determine what types of material was on them. In the course of such investigations, I have viewed a range of a wide range of sexually explicit materials, including nude or partially nude sexually explicit

images, such as "centerfold-type" images, images of simulated sexual acts, images of actual sexual acts, "hardcore" sexual images, and child pornography.

5. I believe I am qualified to offer fact and opinion testimony in this case on several topics discussed below, including:

(i) the range of sexually explicit materials that are available through computer online access, including some of the places this material is available online, such as Bulletin Board Services and Internet Web sites and newsgroups, the methods by which such sites can be accessed, and the computer-based "links" that connect sexually explicit sites;

(ii) the ease by which sexually explicit sites can be located and accessed by undertaking "key word" searches through "search engines" for finding information on the Internet;

(iii) the widespread availability of sexually explicit materials online, based on my experience as a law enforcement officer;

(iv) the existence of mechanisms that are being offered by certain Web sites to restrict access by minors;

(v) the practical ability of parents to deal with the easy availability of sexually explicit material on their own.

SEXUALLY EXPLICIT MATERIALS ONLINE

6. The first part of my testimony describes some of the searches I recently undertook in connection with presenting this testimony. It sets forth examples of sexually explicit materials available on three main sources on the Internet: World Wide Web Sites, Bulletin Board Services, and Usenet Newsgroups. Examples of the types of materials I found are attached as

exhibits to this declaration. The process by which I searched and found these materials on the Internet is described below. In undertaking these searches, I first "logged-on" to the Internet through MCI, one of many companies that provides access to the Internet. I conducted most of the searches described herein using NetScape 2.0, a browser program that allows the user to conduct searches for materials on the Internet. In addition, the computer I used contained a modem with a 28.8 baud rate, which for the past year has come installed on many new computers as the current "state-of-the-art." I also utilized a computer monitor that shows images in color—which has also been used for many years a feature on home computers.

A. World Wide WEB Sites

I. *YAHOO! "XXX" Search—Links Off First 25 Hits*

7. The first search I undertook was one that was specifically intended to find sexually explicit sites on the World Wide Web. Using the YAHOO! search engine—one of several methods by which users of the Internet can search for materials—I conducted a search using the key words "XXX." The first 25 hits were links to Web sites offering a variety of adult or "XXX" rated films, videos, stories, images, interactive CD-ROMs, "adult toys," and magazines. Included among these were "*Las Vegas Showgirls*," "*funplace*," and "*Sextacy*," each of which contained links to sexually explicit images. *See* Exhibit 2.

8. ***Las Vegas Showgirls***: The link to *Las Vegas Showgirls* offered "Free nude pictures, hot live phone sex and XXX live video conferencing with Las Vegas Showgirls." Exhibit 2, page 2. I "clicked" on this

link—that is, I used my computer "mouse" to point an arrow over this link and clicked once on the mouse.

a. This brought up a "warning" page notifying the user that the site "contains material intended for Adult viewing only." *See* Exhibit 3, page 1. The page includes a link called *Yes, I am over 18 years old and would like to access the Sex Vision/Las Vegas Showgirls Home Page.* I clicked on this link. Once I did so, I immediately moved on to the next step in the search process. There was no other hindrance to proceeding other than to click after the "warning" screen.

b. Clicking past the warning screen brought up the "home page" of Sex Vision—that is, the first page of this Web site which summarized its over contents. Several images of nude or partially nude women appear on this page. *See* Exhibit 3, page 2. Thus, just two steps removed from the "XXX" search on YAHOO, I was viewing sexually explicit images of nude women. Several links appear at the bottom of the home page. One link called *Sample Screen Shot* appears in a box near the bottom of the Home Page. Exhibit 6, page 3. I clicked on this link.

c. This immediately brought up "Sex Vision Sample Screenshot" page that contained some of the same sexually explicit images that appear on the home page. Also among the sample images is a computer screen showing an image of a partially nude woman. *See* Exhibit 3, page 4. At the bottom of the page there is a *Back to Main Page* link. I clicked on this link, which returned me to the Sex Vision Home Page. Exhibit 3, page 2.

d. I then clicked on another link that appears at the end of the Sex Vision Home Page called "*Information.*" This brought up a screen that also contained some of the same sexually explicit images that appear on the Home Page, as well as another sample computer screen showing an image of a partially nude woman. *See* Exhibit 3, page 5. The page also includes text describing the services available at Sex Vision, the computer requirements for utilizing these services, and the prices charged for the available services. Web sites such as this that make sexually explicit materials available commonly provide "free samples" and then provide information on how a user to purchase more materials. In this case, the Information Page notes that Visa, MasterCard and American Express can be used to pay for services ordered from Sex Vision.

e. No additional images were available for free at this site. Using my computer with a 28.8 bps modem, it took only a matter of seconds from the time my search identified this site to click through the links as described above.

9. ***The FunPalace***: I then returned to my initial YAHOO! search result displaying the first 25 hits on the search "XXX" (Exhibit 2) (which involved simply clicking on a "BACK" feature on the Web Browser software which essentially "turns the pages" back to my original search result. The link to *funpalace* offered "instant access to 100's of hardcore pics & movie clips." *See* Exhibit 2, page 2. I clicked on this link.

a. This brought up "*The FunPalace*" home page. *See* Exhibit 4, page 1. This page also contains a warning screen and links to other locations at the Web site, including a link to *Samples.* I clicked on this link.

b. This brought up a short page of text stating: "Here's a little taste of hard-core porn photos, the

pictures inside are completely uncensored.Raw, [sic] XXX skin on skin! When you come back as a V.I.P. member, I let you go ALL the way in [sic] I'll be waiting for you!!!" *See* Exhibit 4, page 3. Again, this site provides free samples, with instructions on how to buy more. There is link to *Samples* on this page. I clicked on this link.

c. This brought up a page called "Index of/index.samples," which listed 19 links to images. *See* Exhibit 4, page 4. I clicked on the link to *samp1.jpg*.

d. This brought up a page with two sexually explicit images of a couple engaging in sexual intercourse. *See* Exhibit 4, page 5. It took me only three clicks of the mouse and a few seconds after entering The FunPalace to reach these images.

e. I returned to the "Index of/index.samples" (Exhibit 4, page 4) and clicked on the link to *samp6.jpg*. This brought up a sexually explicit image of a woman. *See* Exhibit 4, page 6.

10. ***Sextacy***: I then returned to my initial YAHOO search result displaying the first 25 hits on the search "XXX." Exhibit 2. The link to *Sextacy* is described as a "virtual sex site, browse through hundreds of pictures with your first virtual account: amateurs and celebrities, XXX." *See* Exhibit 2, page 2. I clicked on this link. This brought up the "Sextacy Warning Page." *See* Exhibit 5, page 1. At the end of "Sextacy Warning Page," appears a link to *Other Adult Links*. *See* Exhibit 5, page 2. I clicked on this link. This brought up a list of links to other sites, including one to *XXX City* and one to *Download 30+ Nude Celebrities Free*. *See* Exhibit 5, page 3.

11. *Adult Verification*: The *Sextacy* site is a good example of a site that required credit card or other

verification to gain access, and provided several links to information and services on how to do so. I could not proceed further on this site without an Adult Check ID or a First Virtual Account. The "Sextacy Warning Page" provides a direct link to *Adult Check ID*, Exhibit 5, page 1, and *First Virtual Account*, Exhibit 5, page 2. I clicked on the link to *Adult Check ID*.

a. This brought me to the "*Adult Check*" home page. Exhibit 6, page 1. The home page states:

> sites using Adult Check are able to restrict minors from entering. It is very easy to use for Net users, simply fill out the form, including your Credit Card information, we charge a nominal $9.95 annual fee, and we will give you an Adult Check ID which you can use at all participating sites. This means that anytime you want to enter a site utilizing Adult Check, you simply enter your Adult Check ID # and it will let you enter, for FREE!

The "*Adult Check*" home page includes a link to *Information*. I clicked on this link.

b. This brought up a page called "More Information." Exhibit 6, page 2. This page provides additional information about the *Adult Check ID* and advises the user that "[w]e are currently expanding the number of Adult Sites using our system, it is growing very rapidly, so get [an *Adult Check ID*] now to be able to see the sights YOU want to see!" At the bottom of the page appears a link called *Links*. I clicked on this link.

c. This brought up a list of linked "Sites Utilizing Adult Check," including *Lust Lane*, *Here Beautiful hot girls!!!*, *Don's World*, *XXX City*, *X-Sites* and

World Wide Sex Links. *See* Exhibit 6, page 3. At the end of the "Sites Utilizing Adult Check" appears the statement "If you own an Adult Site and would like information on Participation click *here*." I clicked on the link (the word *here*).

d. This brought up a page called "Adult Site Owners." *See* Exhibit 6, page 5. This page advises adult site owners how to install and use the Adult Check System. The operators of Adult Check pay adult site operators for each referral to Adult Check from the site. The page includes a site application form at the end. The page also includes a link to the user *application form*. *Id.* at page 2. I clicked on the link to the *application form*. This brought up an Adult Check Application Form for users. *See* Exhibit 6, page 7.

e. I then returned to the list of "Sites Utilizing Adult Check." *See* Exhibit 6, page 3. To check another link, I clicked on *Here Beautiful hot girls!!!* This brought up a page advising that nude pictures appear on the page and providing links to *Adult Check* and *Adult Verification System*. Exhibit 7.

f. I then returned to the list of "Sites Utilizing Adult Check." Exhibit 6, page 3. I clicked on the link to *Don's World*. This brought up the "Don's World" home page. *See* Exhibit 8, page 1. The site offers "Adult Nudes and Hard core Pics - Lots Now & Many More on the Way." The "Don's World" home page also offers links to three adult verification services: "*Validate*," "*Adult Check*," and "*Adult Verification System*." Exhibit 8, page 2. I clicked on the link for *Validate*.

g. This brought up a page called "Validate" which provides information about the services provided by "*Validate*." At the bottom of the page is a link to

Register Your Adult Site Free. Exhibit 8, page 4. I clicked on this link.

h. This link brought up the "Validate" home page, Exhibit 8, page 5, which provides information to adult site owners on registering with "Validate." The page includes the following statement:

> When you register your website for this service you will be given a 'frontpage' that asks for a user ID and password. When this information is entered and submitted by the user, it accesses our database for verification. Once verified, the user will be automatically 'transported' to the webpage that you specify! If the user is not 18 years of age or older or has not been verified by our service they will not be able to access your site! There is no need for you to have access to cgi scripts since everything is taken care of for you!

At the bottom of the page are several links to additional information about "Validate," including one for *Validate Services*. I clicked on this link. This brought up a screen advising users how to sign up for "Validate." Exhibit 8, page 6.

i. Finally, a description of a "First Virtual Account Application" is set forth at Exhibit 9. First Virtual appears to be an entity which provides Internet users with a 12-digit "Personal Identification Number" after credit card information is provided to First Virtual. Based on the information provided, the First Virtual PIN number can then be used to access certain sites on the Internet and purchase materials from such sites, including sexually explicit sites. *See* Exhibit 5, page 2 (Sextacy Web site).

II. *YAHOO! "XXX" Search—Links Off Hits 26-50*

12. I returned to my initial search results for the YAHOO! search for matches containing the search term "XXX." Exhibit 10. After the first 25 hits appears a link to *Next 25 matches*. *See* Exhibit 2, p. 2. I clicked on this link.

13. This brought up a screen displaying matches 26-50 of the YAHOO! search for matches containing the term "XXX." Hits 26-50 also are links to Web sites including *Honey, The*, *Absolute Sex*, *The Ferrari Club*, *Amateur Hardcore*, and *Cybergirls Webzine* each of which were links to sexually explicit images.

14. ***Honey, The***: The link to *Honey, The* offered "[i]nstant access to Hot XXX Adult Pictures." *See* Exhibit 10, page 2. I clicked on this link. This brought up The Honey Page Web site. Exhibit 11. On the first page is an image of a woman clothed only in panties. A passcode is needed to proceed any further on this site.

15. ***Absolute Sex***: I returned to the display of matches 26-50 from the YAHOO! search for matches containing the term "XXX." The link for *Absolute Sex* advertised "thousands of new XXX adult images . . ." *See* Exhibit 10, page 1. I clicked on this link.

a. This brought up the home page for the Absolute Sex Web site, which contains an image of a nude woman. *See* Exhibit 12, page 1. The page also "warns" that "You Must Be 18 To Enter This Site." The page then contains a link called Enter *Absolute Sex*. I clicked on this link.

b. This brought up a page containing information on how to access the "thousands of high-quality XXX rated GIF/JPEG images and Animations" available at

the site. *See* Exhibit 12, page 2. Also included on this page is a link to *Sample Page*. I clicked on this link.

c. This brought up the "Absolute Sex Preview" page displaying 6 sexually explicit images of nude or partially nude men and/or women with the breast and genital areas on each of the images covered with a small purple patches. *See* Exhibit 12, page 3. Each of the images is linked to a full-sized picture. The first image is captioned "Click on this HOT Burnette's thumbnail picture to view the full size image." I clicked on this image.

d. This brought up a full-sized image of the picture. Exhibit 12, page 5. The image is a frontal picture of a nude woman with her breasts partially covered by a purple dot

e. I returned to the "Absolute Sex Preview" page. Exhibit 12, page 3. The second image is captioned: "Check out this SEXY Amateur Model." I clicked on this image. This brought up a full-sized picture of a nude woman with her breasts and genitals partially covered by a purple dot. *See* Exhibit 12, page 6.

f. I returned to the "Absolute Sex Preview" page. The third image is captioned: "Say hello to Jon." I clicked on this image. This brought up a full-sized picture of a nude man with his genitals partially covered by a blue rectangle. Exhibit 12, page 7.

g. It took me only a few clicks of the mouse to reach each sexually explicit materials on this Web site from the search results.

16. ***Ferrari Club***: I then returned to the display of matches 26-50 from the YAHOO! search for matches containing the term XXX. The link to *Ferrari Club* offers "online erotica (pictures, movies), Immediate access, 100% Confidential, 50,000 files, sex, xxx, porn,

adult bbs." *See* Exhibit 10, page 2. I clicked on this link.

a. This brought up several pages containing information "warning" potential viewers that "sexually explicit material" could be accessed at the site. *See* Exhibit 13, pages 1-4. At three points on these warning pages, I had to click on a *proceed* link three times to reach the MainPage of Ferrari Club.

c. The MainPage introduces "Alexandria," as the "hostess" at the *Ferrari Club*. The MainPage contains links to several sites in the *Ferrari Club*, including "Take a peek inside." An arrow next to the "Take a peek inside" link points to a sexually explicit picture of a man and woman lying on a bed, with their genitalia covered with a small black circle. Exhibit 13, page 5.

d. I then clicked on the *Take a peek inside* link. This brought up a screen listing categories of sexually explicit images that are available to "V.I.P. Cardholders." *See* Exhibit 13, page 6. At the bottom of the page the statement appears: "Only V.I.P. cardholders are granted FULL access to the lounge, but you're a cutie, so I'll let you sneak a peek just this once." This statement is followed by a link called *SNEAK*. Exhibit 13, Page 6.

e. I then clicked on *SNEAK*. This brought up a screen with a picture of a man and a woman lying on a bed with their genitalia covered with a small black circle. Exhibit 13, page 7. Under the picture is a link to *Next Picture* . . .

f. I then clicked on *Next Picture* . . . This brought up a screen with an explicit image of a man and woman engaging in intercourse, with the couple's genitalia covered with small black circles. Exhibit 13, page 8.

e. It took only a matter of seconds to proceed through these links to the images described above.

17. ***Amateur Hardcore:*** I then returned to the display of matches 26-50 of matches containing the term "XXX." The link to *Amateur Hardcore* offers a "searchable database of XXX hardcore images." Exhibit 10, page 1. I clicked on this link.

a. This brought up a screen entitled "WELCOME to Amateur Hardcore." Exhibit 14, page 1. This site offers a "searchable database of XXX hardcore images." The site also provides a search engine that will search by keyword for specific types of sexual activities.

b. The "WELCOME to Amateur Hardcore" page also contains a link to the *daily hot shot*. I clicked on this link. This brought up a screen entitled "Pic of the Day! (R-rated Version)" which includes an image of a woman's buttocks and exposed genitals. Exhibit 14, page 3.

18. ***Cybergirls Webzine***: I then returned to the display of matches 26-50 of matches containing the term "XXX." The link to *Cybergirls Webzine* states: "made by real cybergirls. Rated XXX for adults over 18 only! MasterCard and Visa accepted." Exhibit 10, pages 1-2. I clicked on this link.

a. This brought up the home page for "Cybergirls Webzine." Exhibit 15, page 1. The home page notes that it is "For ADULTS over 18 only!" It then offers users a choice of two links: *I am already a PAID MEMBER* and *I want to see a sample first*. I clicked on the *sample* link.

b. This brought up a page introducing a "customer service representative" and providing another link called *CLICK HERE to proceed to CYBERGIRLS WEBAZINE*. Exhibit 15, page 2. I clicked on this

link to proceed. This brought up another page with information on registering to access the site. The page offered a link called *I want to see a sample first.* Exhibit 15, page 3. I clicked on this link.

c. This brought up a page advertising the Cybergirls bulletin board service. Exhibit 15, page 4. The page also offered a link to the *CONTENTS page.* I clicked on this link. This brought up a Non-members Contents page offering *a FREE sample of our Nasty XXX Photos.* I clicked on this link. Exhibit 15, page 5.

d. This brought up a page of 13 images of nude or partially nude women. Exhibit 15, pages 7-8. At the bottom of the page is a link to *MORE XXX PHOTOS.* I clicked on this link.

e. This brought up a page of three additional images of women posed with their breasts and/or genitals exposed. Exhibit 15, page 9.

f. Each of the images on this site was captioned with sexually explicit language describing the images and activities depicted.

III. ***Lycos Search for "XXX Sex"***

19. In a separate search, I used the Lycos search engine, to search for the terms "XXX Sex." This search result yielded many hits to sites containing sexually explicit material. Exhibit 16. I clicked on the link to *sex-sex-sex-xxx-sex-The Forbidden Zone-xxx-sex-sex-sex-sex-sex.* Exhibit 16, page 4. This brought up the home page of "The Forbidden Zone." Exhibit 17. I could not proceed further on this site without becoming a member. However, the home page of "The Forbidden Zone" includes links to other sites containing sexually explicit material. Exhibit 17, page 2. I clicked on the link to *Steamy Erotic Links.*

This brings up a page advising the user that "Steamy Erotic Links" has moved and gives a link to the new location, *http://webbworld.com/steamy/steamy.htm.* Exhibit 18, page 1. I clicked on this link. This brought me to a list of "Steamy Erotic Links," a series of links to sites containing sexually explicit materials. Exhibit 18, pages 2-10. I clicked on the link to *Hot Sex.* Exhibit 18, page 3.

20. ***Hot Sex*** link brought me to the "Hot Sex" home page, which provides materials for members, but also includes a link to *Free Samples.* Exhibit 19, page 1. I clicked on the *Free Samples* link. This brought up the "Hot Sex Sample Picture Gallery," which offered links to 22 sexually explicit images. Exhibit 19, page 2.

a. In the "Hot Sex Sample Picture Gallery," I clicked on the link to *Beaver Shots.* This brought up an image of a nude woman with her genitals exposed. Exhibit 19, page 4.

b. I returned to the "Hot Sex Sample Picture Gallery" and clicked on the link to *Panties.* This brought up an image of a woman clothed only in panties. Exhibit 19, page 5.

c. I returned to the "Hot Sex Sample Picture Gallery" and clicked on the link to *Boobs.* This brought up an image of a nude woman. Exhibit 19, page 6.

d. I returned to the "Hot Sex Sample Picture Gallery" and clicked on the link to *Cunnilingus.* This brought up an image of an act of oral sex. Exhibit 19, page 7.

21. ***Nikkita's Outrageous Fantasies.*** I then clicked back to the list of "Steamy Erotic Links" and clicked on the link to *Nikkita's Outrageous Fantasies.* Exhibit 18, page 3. The link to *Nikkita's Outra-*

geous Fantasies brought up a page advising the user that the site had moved. The statement "*Click here* to go directly to the Surfing Monkey" appears near the top of the page. Exhibit 20, page 1. I clicked on this link.

a. This brought me to a registration page for the Surfing Monkey home page, including a graphic of *The Surfing Monkey*. Exhibit 20, page 2. Clicking on this graphic linked me to the home page for "The Surfing Monkey." Exhibit 20, page 4. This page included links to several other sites, including *Nikkita's Outrageous Fantasies*. I clicked on this link.

b. This brought up a page of text about the Communications Decency Act. Exhibit 20, pages 6-9. A link at the end of this text tells the user: "You may enter Nikkita's Outrageous Fantasies by *Pressing here*." I clicked on this link. Exhibit 20, page 9.

c. This brought up the home page of "Nikkita's Outrageous Fantasies," which includes a sexually explicit image. Exhibit 20, pages 10-12. The home page also includes a link to *My Photo Album*. Exhibit 20, page 12.

d. This link brought me to "Nikkita's Outrageous Fantasies Photo Album," which provides links to sexually explicit images at this site. I clicked on the link to *Nudes*. Exhibit 20, page 13. This brought up a page entitled "Nudes," which displayed 27 images of a nude or partially nude woman. The images could be displayed in full size by clicking on the picture. Exhibit 20, pages 15-16. I clicked on *Nikki16.jpg*, which brought up a full sized image of a nude woman. Exhibit 20, page 18. I also clicked on *Nikki17.jpg*, which brought up a full-sized image of a nude woman. Exhibit 20, page 19.

22. ***Sexxxnet***: I then clicked back to the list of "Steamy Erotic Links" and clicked on the link to *Hardcore Pictures Archive*. Exhibit 18, page 2. This brought up a page called "Sexxxnet First Amendment Privacy Shield," which explains that the site provides access to material that is "adult oriented." Exhibit 21, page 1. I clicked on the link *I accept the above terms and conditions and wish to continue.*

a. This brought up a page titled "Welcome to Sexxxnet," which provides links to "the hottest and sexiest adult material on the Internet." Exhibit 21, page 2. I clicked on the link to *Hardcore 12 Pack*. This brought up a page titled "Hardcore 12 Pack," which advises users that "[t]o purchase the 12 pack, you must have a First Virtual account, Visa or MasterCard." Exhibit 21, page 3.

b. I then clicked back to the page titled "Welcome to Sexxxnet" and clicked on the link to *Hardcore Pictures Archive*. Exhibit 21, page 2. This brought up a page titled "Hardcore Pictures Archive, which offered for sale "thirty of the hottest and sexiest pictures of hardcore sex known to man." Exhibit 21, page 5. I could not access any of these images without a First Virtual account or a credit card.

23. ***69 Porn Place***: I then clicked back to the initial search result for the terms "XXX Sex" on the Lycos search engine. *See* Exhibit 16. I clicked on the link to *69 Porn Place*. Exhibit 16, page 1. This brought me to "69 Porn Place," which included a link to *45,000 hardcore XXX adult pictures to DOWNLOAD NOW!* Exhibit 22. I clicked on this link.

a. This brought up the main page of "69 Porn Place," which displays an image of a nude woman. Exhibit 22, page 3. I clicked on a link to *Table of Contents*. This brought up the "Table of Contents"

for "69 Porn Place," which includes an image of a nude woman kneeling with her breasts covered by a circle stating "NO minors." Exhibit 22, page 5.

b. I clicked back to main page of "69 Porn Place" and clicked on the *Proceed* link. *See* Exhibit 22, page 4. This brought up a page titled "69 Porn Place" that included a sexually explicit image of a woman. Exhibit 22, page 6. There is a link on the page to *Sample Pictures*. I clicked on this link.

c. This brought up a page of "Free Sample Pictures." Exhibit 22, page 8. I clicked on the link to *sample#01*. This brought up an image of a woman performing oral sex on a man with the genital area covered with a circle stating: "NO minors." Exhibit 22, page 9. I had previously accessed this site on or about February 8, 1996, and the image was not covered in any manner. *See* Exhibit 22, page 10.

d. I clicked back to the page of "Free Sample Pictures" and clicked on *sample#08*. Exhibit 22, page 8. This brought up an image of a nude woman performing oral sex on another nude woman. Exhibit 22, page 11. Again, portions of the picture were covered with a circle stating: "NO minors." I had previously accessed this site on or about February 8, 1996, and the image was not covered in any manner. *See* Exhibit 22, page 12.

e. I clicked back to the page of "Free Sample Pictures" and clicked on *sample#13*. Exhibit 22, page 8. This brought up an image of a partially nude woman with her genital area has been covered with a circle stating: "NO minors." Exhibit 22, page 13. I had previously accessed this site on or about February 8, 1996, and the image was not covered in any manner. *See* Exhibit 22, page 14.

IV. ***Other Web Searches***

24. Tab IV includes other sites I have accessed in conducting searches for sexually explicit material on the Internet in connection with this case.

25. *CyberBabes*: Exhibit 23, the search result of a search for "CyberBabes," provides links to sites containing sexually explicit images. I had previously accessed this site through a search for sexually explicit materials conduced on or about March 5-6, 1996. I accessed this site again on April 4, 1996.

a. The "CyberBabes" home page contains links to a number of sexually explicit sites. A box describing links to these sites appears on the home page. *See* Exhibit 24, pages 2-3. The last box in the fourth row of boxes has a link to *Beautiful Women*. Exhibit 24, page 3. I clicked on this link.

b. This brought up a warning page and a link to proceed further into the site. Exhibit 24, page 6. I clicked on the link.

c. This brought up an image of a nude woman and links to 17 additional images. exhibit 24, page 7.

d. I clicked on the link to *thom07.jpg*. This brought up an image of a nude woman. Exhibit 24, page 8.

e. I then clicked backed to the CyberBabes home page. Exhibit 24, pages 1-5. The last box in the first row of boxes has links to *Ginger* and *HERE*. Exhibit 24, page 2. I clicked on the link to *HERE*.

f. This immediately brought up five sexually explicit images of couples engaged in sex acts. Exhibit 24, page 9. A link to *More Pix!* appears on the page. I clicked on this link.

g. This immediately brought up four additional images of couples or groups engaged in sex acts.

Exhibit 24, page 10. A link to *More Pix!* appears on the page. I clicked on this link.

h. This immediately brought up two additional images of couples or groups engaged in sex acts. Exhibit 24, page 11. Twenty-one links appeared on this page to *CumParty01.jpg* through *CumParty21.jpg*. Each of these images can be accessed by a click of the mouse.

26. ***STeamRs Index***: Exhibit 25, the "STeamRs Index," provides access to a number of sexually explicit images. I had previously accessed this site through a search for sexually explicit materials conducted on or about March 5-6, 1996. I accessed this site again on April 4, 1996. The home page of the "STeamRs Index" includes a link to *Picture of the Week*. I clicked on this link.

a. This brought up a "Notice" page advising users under the age of 18 to leave the site. Exhibit 25, page 4. The page also provides a link to "*The Gallery*". I clicked on this link.

b. This link took me to the "STeamRs-Net Collection," which displayed several images of nude or partially nude women. Each image provides a link to a full-sized image. I clicked on the link to *Miss December*. Exhibit 25, page 6. This brought up an image of a partially nude woman seated at a computer keyboard. Exhibit 25, page 9.

c. I then clicked back to the "STeamRs-Net Collection," and clicked on the link to *35k-01/21*. Exhibit 25, page 5. This brought up a full-sized image of a nude woman laying across a bed.

27. ***Studman Collection***: Exhibit 26, "The Studman's Collection of Women" provides access to a number of sexually explicit images. I had previously accessed this site through a search for sexually

explicit materials conducted on or about March 5-6, 1996. I accessed this site again directly on April 4, 1996.

a. The home page of the "The Studman's Collection of Women" displays many images of nude or partially nude women in sexually explicit poses or engaged in sexual acts. Exhibit 26, pages 1-3. Each image is linked to a full-sized image. Under the caption "MORE of Anna-Marie Goddard," Exhibit 26, page 2, I clicked on the second image in the second row of images. This brought up a full-sized image of a partially nude woman. Exhibit 26, page 4.

b. I clicked back to "The Studman's Collection of Women" home page. Under the caption "MORE of Anna-Marie Goddard, Exhibit 26, page 2, I clicked on the last image in the first row of images. This brought up a full-sized image of a partially nude woman. Exhibit 26, page 5.

28. ***Bill's Fav Pics***. Exhibit 27, "Bill's Fav Pics," previously provided access to several of sexually explicit images. I had previously accessed this site through a search for sexually explicit materials conducted on March 6, 1996. When I attempted to access this site again on April 5, 1996, the pictures had been removed from the site. When I accessed the home page for "Bill's Fav Pics" on March 6, 1996, the page provided links to a number of sexually explicit images. Exhibit 27, page 1. I clicked on three of these links. One link brought up an image of a nude woman. Exhibit 27, page 3. Another link brought up an image of a partially nude woman. Exhibit 27, page 4. Another link brought up an image of a nude woman. Exhibit 27, page 5.

V. ***Web Search for "Little Women"***

29. Using the WebCrawler search engine, I searched for term "little women." The first hit on this search was *See hot pictures of naked women!. See* Exhibit 28. I clicked on this link. This brought up a page that had simply a *Click Here* link. Exhibit 29, page 1. I clicked on this link.

30. *Cyberporn Magazine*: This brought up the "CyberPorn Adult Online Magazine." This page includes information "warning" the user that adult materials are available on the site. The page also contains a link called *I certify that I am an adult. Enter CyberPorn.* Exhibit 29, page 2. I clicked on this link.

a. This brought up a page containing links to issues of "CyberPorn Adult Online Magazine," including *April 1996 Issue.* Exhibit 29, page 3. I clicked on this link.

b. This brought up "CyberPorn Adult Online Magazine's" Home Page. This page offers a series of links to materials in the April issue of the Magazine. *See* Exhibit 29, page 4. I clicked on a link to *Get April's instant password here!* This brought up a page providing information on how to obtain a password to access the Magazine. Exhibit 29, pages 6-8. The page explains several means of obtaining a password, including the Magazine's 900 telephone number, the CyberCash Secure Internet Payment System, a First Virtual Account and use of Redi-Check Secure Pay.

c. I then returned to the home page for "CyberPorn Adult Online Magazine." I could not access images from the Magazine without a password. However, near the end of the home page is a link to *CyberPorn's Special Links.* Exhibit 29, page 5. I

clicked on this link. This brought up a page of "CyberPorn's Choice Links." Exhibit 29, page 8. I clicked on this link. "CyberPorn's Choice Links" provides links to sites offering sexually explicit materials, including *Danni's Hard Drive.* Exhibit 29, page 8. I clicked on the link to *Danni's Hard Drive.*

31. ***Danni's Hard Drive***: This brought up a page called "Welcome to Danni's Hard Drive!" Exhibit 30, page 1. This page includes a link to proceed on this site (in the image of a woman's breast). I clicked on this link.

a. This brought up a page advising the user that "erotic materials" are available on the site. Exhibit 30, page 2. A paragraph beginning *I am at least 18 years of age . . .* links the user to the next page. I clicked on this link.

b. This brought up a page titled "Danni's Hard Drive," Exhibit 30, page 3, which includes several links to other pages of the Web site. I clicked on the link to *Picture of the Week.* This brought up an image of a partially nude woman. Exhibit 30, page 4. I clicked back to the page titled "Danni's Hard Drive." Exhibit 30, page 3. I clicked on a link to Danni Ashe.

c. This brought up an image of a partially nude woman. Exhibit 30, page 5. This page contains several additional links, including one to *Photo sets.* I clicked on this link.

d. This brought up a page of links to 23 images of nude or partially nude women. Exhibit 30, page 6. I clicked on the link to *PINK SWEATER.* This brought up an image of a partially nude woman. Exhibit 30, page 7.

e. I then returned to the page titled "Danni Ashe." Exhibit 30, page 5. At the top of this page is a link to the *HOT BOX.* I clicked on this link.

32. ***Hot Box***: The *HOT BOX* link brought up a page titled "Hot Box," Exhibit 31, page 1, which includes an image of a partially nude woman. This page includes a link: "I'm a Hot BOX *Member*." I clicked on this link.

a. This brought up a page with an image of a partially nude woman. Exhibit 31, page 2. At the bottom of the page is a link to *Subscribe to the Hot BOX*. I clicked on this link. This brought up a page describing "Hot BOX Subscription Options," Exhibit 31, page 3. A link on the page brought up a screen of Hot Box membership information. Exhibit 31, pages 4-5.

b. I returned to the "Hot BOX Subscription Options" page, Exhibit 31, page 3, and clicked on a link to *MODELS*. This brought up a page of "Models" and includes links to 52 images. Exhibit 31, page 6. I clicked on the link to *Fantasia*. This brought up an image of a partially nude woman. Exhibit 31, page 7. Other images of nude or partially nude women also are linked from the "Models" page.

VI. ***Web Search for "Jasmine"***

33. Using the WebCrawler search engine, I searched for term "Jasmine," the name of a character in the Disney movie "Aladdin." This search brought up a number of sites, many of which did not contain sexually explicit material. Exhibit 32. However, among the first 25 hits is a link to *Chip's Erotic Toon and Anime Page*. I clicked on this link.

a. This brought me to a page titled "Chip's Erotic Toon and Anime Page." The page contains a sexual image of three female characters from Walt Disney animated films, including Jasmine from "Aladdin" and Ariel from "The Little Mermaid." Exhibit 33, page 1.

I clicked on the link to *Aladdin and Jasmine, doggy style*.

b. This brought up a sexual image of the animated characters Aladdin and Jasmine. Exhibit 33, page 4.

c. I clicked back to the page titled "Chip's Erotic Toon and Anime Page" and clicked on the link to *Pocahontas, in the forest*. Exhibit 33, page 2. This brought up a sexual image of the animated character Pocahontas, from the film of that name. Exhibit 33, page 5.

d. I clicked back to the page titled "Chip's Erotic Toon and Anime Page" and clicked on the link to *Belle and the Beast, enjoying Belle's chest*. Exhibit 33, page 1. This brought up a sexual image of the animated characters Belle and the Beast from the film "Beauty and the Beast."

34. I clicked back to the WebCrawler search result for the term "Jasmine" and clicked on a link to *X-traordinary Talk!* Exhibit 32, page 2. This brought up a page titled "X-traordinary talk," which describes the site as offering "Fem-Dom Erotica." Exhibit 34, page 1. I clicked on a link under "Cassettes" to *Mistress Jasmine Series*. This brought up text descriptions of cassette series that can be purchased at the site. The language used describes sexual activities and organs in explicit detail.

VII. ***Web Search for "Sleeping Beauty"***

35. Using the WebCrawler search engine, I searched for term "Sleeping Beauty." This search brought up a number of sites, many of which did not contain sexually explicit material. Exhibit 35. However, among the first 10 hits is a link to *Beauty's World*. I clicked on this link.

a. This brought up a page titled "Beauty's World." Exhibit 36, page 1. The page advertises "The Complete Internet Sex Resource Guide." I clicked on the link to *CISRG*.

b. This brought up a page of links to sites offering information and materials that appear to be related to sexual activities. Exhibit 36, pages 3-5. At the bottom of this list is a link to *Sex Related FTP Sites*. I clicked on this link.

c. This brought up a list of FTP sites containing information and materials that appear to be related to sexual activities. Exhibit 36, pages 6-7. Near the bottom of this list is a link to *INTERNET NEWSGROUPS*. I clicked on this link.

d. This brought up a list of links to sex-related Internet newsgroups sites, including links to the alt.binaries and alt.sex hierarchies. Exhibit 36, pages 8-10. *See infra*.

B. ***Bulletin Board Services*** (Tab VIII)

36. My initial search for the term "XXX" using the YAHOO! search engine also yielded links to the Web sites for several Bulletin Board Services (BBSs). *See* Exhibit 37, page 6. I clicked on the link to *South Shore Secrets BBS*.

a. This brought up a page titled "Enter the World of . . . South Shore Secrets BBS." Exhibit 38, page 1. This is the home page of the Web site for this BBS, but it is not the BBS itself. On the Web site homepage, two images of partially nude women appear on the page. The page includes a link in the statement "We have *thousands of files* online." I clicked on this link.

b. This brought up a page titled "THOUSANDS of Files at SSS." The page includes four images of nude

or partially nude women. Exhibit 38, pages 3-6. The page also includes descriptions of the types of file areas on the BBS.

c. I clicked back to the page titled "Enter the World of . . . South Shore Secrets BBS" and clicked on the link to *Free Trial*. Exhibit 38, page 2. This brought up a page titled "Call NOW for a FREE Trial!! The page featured three images of nude or partially nude women. Exhibit 38, pages 7-9.

d. I then clicked on the link to *MatchMaker Questionnaires*. This brought up a page titled "MatchMaker Services," which depicted a partially nude woman. Exhibit 38, page 11.

e. I clicked back to the page titled "Enter the World of . . . South Shore Secrets BBS" and clicked on the link to *message areas*. Exhibit 38, page 1. This brought up a page titled "More than 80 Sexual & Non-Sexual Message Areas" which displayed two images of nude women. The page also includes descriptions of the types of sexually explicit message boards available on the BBS. At the end of the page is a telephone number to dial the BBS by modem and a password for "guests" to use to access the site for a 2-day "trial" period. Exhibit 38, pages 12-15. I dialed into the BBS and used the guest password to gain access.

f. Dialing into the BBS brought up a screen of information on how to join the BBS. The screen also tells the user how to obtain "FREE ACCESS" to the BBS for a two-day trial. I spent just about 15 minutes accessing the BBS during this "trial" period. The BBS provides instructions and a tutorial on how to view the sexually explicit material available, including how to move around on the BBS, how to access file areas, and how to download images. It also describes

some of the material available on the BBS. Exhibit 38, pages 16-25.

37. ***Dirty Hacker BBS***: Using the YAHOO! search engine, I searched for the term "adult porn." This search yielded a number of links to sites containing sexually explicit material. Exhibit 39. I clicked on the link to *The Dirty Hacker BBS*. exhibit 39, page 2. This brought me to the Web site for "The Dirty Hacker." Exhibit 40. I clicked on the icon link captioned "What is TDHBBS?"

a. This brought up a page advising users that "The Dirty Hacker BBS" is "an ADULTS ONLY Hardcore Porn BBS." This page further advises: "Due to the explicit sexual content of our literature, GIFs and animations, we can not allow access to any of this material until a signed copy of our subscription form (bulletin #14 on the BBS), and a copy of your driver's license, passport, or birth certificate are on file in this office." Exhibit 40, page 2. An icon of a nude woman appears below this statement provides a link to additional locations on the Web site. I clicked on the icon.

b. This brought up a page titled "TDHBBS Download Directories." The page provides an alphabetical list of links to sites containing sexually explicit material. Exhibit 40, pages 3-6. I clicked on icon next to the caption "Gif's Beginning With The Letter A. Exhibit 40, page 3.

c. This brought up a list of images available on the BBS. The images cannot be viewed without dialing into the BBS, but the Web site contains explicit textual descriptions of the images of sexual activity that can be viewed on the BBS. Exhibit 40, pages 7-25.

d. I attempted to dial into The Dirty Hacker BBS. I could not access this site without a password. Exhibit 40, pages 26-27.

C. ***USENET Newsgroups*** (Tab IX)

38. Using the Lycos search engine, I searched for the terms "porn pictures." This brought up a listing of sites advertising their content as sexually explicit. I clicked on the link to *alt.binaries.pictures.erotica.pornstar*. Exhibit 41, page 1.

a. This brought up a page with individual links to *alt binaries pictures erotica pornstar*. Exhibit 41, page 7. The user can click on any one of these as individual links to reach a larger or more focused newsgroup collection containing sexually explicit images. I clicked on the link to *pornstar*. A listing of materials available in the "alt.binaries.pictures.erotica.pornstar" newsgroup appeared on the screen, with links to images available on this newsgroup. I clicked on one of the links, which brought up an image of a nude woman. Exhibit 41, page 8.

b. I clicked back to the screen of individual links to *alt binaries pictures erotica pornstar* and clicked on the link to *pictures*. Exhibit 41, page 7. This brought up a listing of all of the available newsgroups in the alt.binaries.pictures hierarchy. Exhibit 41, pages 9-10.

c. I clicked back to the screen of individual links to *alt binaries pictures erotica pornstar* and clicked on the link to *erotica*. Exhibit 41, page 7. This brought up a listing of all of the available newsgroups in the alt.binaries.pictures.erotica hierarchy. Exhibit 41, pages 11-12. I clicked on the link to *alt.binaries.pictures.erotica.female*. This brought up a listing of images available in this newsgroup. I clicked on one

of the links, which brought up a screen with 10 images of nude or partially nude women. Exhibit 41, page 13.

d. I clicked back to the listing of all of the available newsgroups in the alt.binaries.pictures.erotica hierarchy. Exhibit 41, pages 11-12. I clicked on the link to *alt.binaries.pictures.erotica.redheads*. This brought up a listing of individual links to *alt binaries pictures erotica redheads*. Exhibit 41, page 14. I clicked on the link to *redheads*. This brought up a listing of images available in this newsgroup. I clicked on one of the links, which brought up a screen with an image of a partially nude woman. Exhibit 41, page 15.

e. I clicked back to the listing of all of the available newsgroups in the alt.binaries.pictures.erotica hierarchy. Exhibit 41, pages 11-12. I clicked on the link to *alt.binaries.pictures.erotica.breasts*. This brought up a listing of individual links to *alt binaries pictures erotica breasts*, which displayed a listing of 2 newsgroups. Exhibit 41, page 16. I clicked on the link to *alt.binaries.pictures.erotica.breasts*. This brought up another listing of individual links to *alt binaries pictures erotica breasts*. Exhibit 41, page 17. I clicked on the link to *breasts*. This brought up a list of images available in this newsgroup. I clicked on one of the links, which brought up a screen with an image of a nude woman. Exhibit 41, page 18.

f. I clicked back to the listing of all of the available newsgroups in the alt.binaries.pictures.erotica hierarchy. Exhibit 41, pages 11-12. I clicked on the link to *alt.binaries.pictures.erotica.blondes*. This brought up a listing of individual links to *alt binaries pictures erotica blondes*. Exhibit 41, page 19. I

clicked on the link to *blondes*. This brought up a list of links to materials available in this newsgroup.

i. This newsgroup contained a direct link back to a Web site, *http://www.cris.com/~heatl/*, with a click of the mouse. The Web site for HEAT claims it is "an adult service featuring the HOTTEST women doing the HOTTEST things for your viewing PLEASURE! Best of all, the site is virtually FREE!" Exhibit 41, page 20.

ii. This newsgroup also contained links to sexually explicit images. I clicked on one of these links, which brought up an image of a partially nude woman. Exhibit 41, page 21.

g. I clicked back to the listing of all of the available newsgroups in the alt.binaries.pictures.erotica hierarchy. Exhibit 41, pages 11-12. I clicked on the link to *alt.binaries.pictures.erotica.male*. This brought up a listing of individual links to *alt binaries pictures erotica male*, which listed two linked newsgroups. Exhibit 41, page 22. I clicked on the link to *alt. binaries.pictures.erotica.male*. This brought up another listing of individual links to *alt binaries pictures erotica male*. Exhibit 41, page 23. I clicked on the link to *male*. This brought up a list of links to materials available in this newsgroup. I clicked on one of these links, which brought up an image of a nude man. Exhibit 41, page 24.

39. I conducted various searches for sexually explicit material on or about March 5-8, 1996. In the course of these searched, I linked to the images which appear as Defendant's Exhibits 70 to 79 and downloaded these images.

OPINION TESTIMONY

40. Based on the foregoing examples of sexually explicit sites and materials online, in my opinion it would be easy for minors operating in an unrestricted online environment—with even a beginner's understanding of how to search for information on the Internet—to find sexually explicit sites. Such a user who is actually seeking sexually explicit material need only type in words or letters on a search engine, such as "XXX" or "XXX Sex" or "Cyber Babes" or "Adult and Porn," to get multiple "hits" on sites which clearly present themselves as sexually explicit. This is by no means an exhaustive list of key words that would produce a list of sexually explicit sites. In addition, many sexually explicit sites themselves provide links to many other sites—as evident by the Steamy Erotic Links site. *See* Exhibit 18. The connection takes a few seconds to minutes (depending on factors such as modem speed and/or how busy the internet is). All of this material is readily obtainable through a point and click of a mouse.

41. It is also in my opinion that, in an unrestricted environment, sexually explicit sites can easily be found even if one is not looking for them. This is evident from the search for "little women." The results for searching under this term will vary depending on the search engine used. For example, a search for this term under the "Infoseek" guide, *see* Exhibit 28, pages 2-3, does not appear to turn up a sexually-oriented site until the fifth link. However, as noted, the very first link for the "little women" search on Web Crawler led to multiple links of sexually explicit sites—including the same "cyberporn.com" site pro-

duced by the Infoseek search. *See* Exhibit 28, page 1. Similarly, the use of the term "Jasmine"—a character from the Disney Movie Aladdin—also led to sexual cartoon images of the Disney characters themselves, as well as a link to the "X-traordinary talk" site which contained graphic descriptions of sexual activities. Exhibits 33 and 34. For this reason, in my opinion it is certainly possible for users to unexpectedly encounter sexually explicit material through a seemingly innocuous search—even one thought suitable for children.

42. It is, of course, possible to attempt to narrow the specific search terms in order to limit the scope of the resulting list of hits. Search engines allow the user to add words to focus the specific area of interest. However, search engines are developed to respond broadly to keywords by providing a maximum number of responses with minimum keyword input. This is intended to preclude users from typing in a word that would exclude information they may be searching for. My own practice and experience as a regular user of the Internet to conduct online research is to cast search terms more broadly and then, having reviewed many different sites, add search terms at that time to focus the search to a more specific area of interest. In addition, some users may not be as familiar with how to limit the search in order to avoid unexpected hits on sites that contain sexually explicit material.

43. In addition, based on the foregoing results, in my opinion sexually explicit sites are widespread on the Internet. I do not have a precise count of the number of such sites—which, indeed, would be nearly impossible given the constant state of growth and change in the entire Internet. I also do not have a

"percentage" of such sites of all the information on the Internet, which in my opinion would be an irrelevant and meaningless figure. Simply put, based on my experience in investigating such sites, there is a substantial and growing number of sexually explicit sites that easily exceeds several thousands. Moreover, each separate site may have multiple images, *see* Exhibit 20, page 16 (Nikkitta), or multiple links to other sites. *See, e.g.*, Exhibits 17, 18. Trying to calculate the exact quantity or percentage of sexually explicit sites, in my view, loses sight of the simple fact that there is an enormous quantity of such material to access and view.

SURFWATCH (TAB X)

44. I was provided a copy of the Surfwatch software that plaintiffs provided to the government. As described below, on April 5, 1996, I undertook a brief, limited experiment to determine whether access to certain specific sites on the World Wide Web that I was aware contained sexually explicit material was in fact blocked by Surfwatch.

45. First, I loaded the version of Surfwatch for the "Windows 3.1" operating system. During the installation process, the most recent update of "blocked sites" was automatically updated on April 5, 1996. I then tested to see if the program was operating by checking an indicator on my computer screen which displays the "icon" for applications that were running, and this indicated that Surfwatch was running. As a further test, I then first sought to access the site for Playboy Magazine, called "Playboy.com." Access to this site was blocked by Surfwatch.

46. Next on April 5, 1996, I proceeded to type into my computer the specific addresses of a number of

sites which contained sexually explicit material. The first such sites were derived from the April 1996 edition of Playboy Magazine, which had a cover story entitled "Women of the Internet." The excerpted pages from the published magazine are set forth at Exhibit 42.[1] Working off of these printed pages, I searched for the Web sites of some of the models depicted, including, http://amore.com (Exhibit 42, page 3); http://www.lucylipps (Exhibit 42, page 5); and http://www.danni.com (Exhibit 42, page 6) by typing these "web addresses" into the computer. Two of the sites were blocked by Surfwatch, but, with Surfwatch running, I was able to gain online access to "amore.com" and, specifically, to the screen set forth at Exhibit 43, page 3 which depicts one of the models contained in the printed April 1996 edition.

47. I also sought to gain access to a sexually explicit site which I had previously located in a prior search. I typed the site address into the URL locator portion of the Web browser. The "commercial name" of the Web site is "RozDesigns Web Heaven" located at http://pilot.msu.edu/user/rozwadow/webhevn.htm. When I entered this web address, this site appeared on my screen with Surfwatch running. I then clicked on the menu of images for three of the models—which contained several images a user can choose from. I then clicked on one image for each of the models. I also clicked on the "Secret Pic of the Week!" Each nude image of the model appeared on the screen while Surfwatch was running on April 5, 1996, *see* Exhibit

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[1] Unlike the other material attached hereto as exhibits, Exhibit 42 is NOT a print-out of material available online but a copy of the actual printed pages of the magazine.

44, indicating this site has not yet been blocked by Surfwatch.

48. I then proceeded to check some of the various links set forth on "Steamy Erotic Links" at Exhibit 45. Access to the listing of links was itself not blocked by Surfwatch. While I did not check every one of the "links" listed at Steamy Erotic Links at Exhibit 45, I did check over 35 sites—about the first two and a half pages on the list. Among the links listed on this index, the "The Wonderful World of Erotica" and "The Keeper"—*see* Exhibits 46, 47—were not blocked by Surfwatch on April 5, 1996. In addition to these, four other sites that appear to have originated overseas were also not blocked by Surfwatch on April 5, 1996, including "Fuzz Butts," "Babes," "Daily Babe Test," "Sex-a-Phone," and "Amateur of the Week."

49. I next checked whether several other sites that have discussed above and attached hereto as exhibits were blocked while by Surfwatch was running on April 5, 1996, by typing in their "Web address."

a. Surfwatch did not block the site designated as "Pix Previews." This site was first found by linking off of the CyberBabes Web site. *See* Exhibit 24. When I typed its address separately with Surfwatch running, it was not blocked. *See* Exhibit 49.

b. Surfwatch also did not block the first page of the "Honey Page" at http://www.apillio.com" at Exhibit 50 (also previously identified at Exhibit 11).

c. Surfwatch also did not block the "Amateur Hardcore" site at http://www.webpower.com/amateurs/ at Exhibit 48 (also previously identified at Exhibit 14).

d. Surfwatch also did not block "The FunPalace" site and sample images contained. This site was first

found through the YAHOO! search for the term XXX. *See* Exhibit 2. When I typed its address separately with Surfwatch running, it was not blocked. *See* Exhibit 51 (also identified at Exhibit 4). In addition, Surfwatch did not block the sample graphical images set forth on pages 2-3 of Exhibit 51. Examples of these images are also contained at Exhibit 4, pages 5-6.[2]

e. Surfwatch also did not block "The Alternative Page." Exhibit 52. A part of this site was first found by linking off of the CyberBabes Web site to: **http://www.txdirect.net/users/aaron**. *See* Exhibit 24, page 7. When I typed this address separately with Surfwatch running, it was not blocked. Exhibit 52. I selected an image different from the one at Exhibit 24, page 7, and clicked it on, as shown at Exhibit 52.

50. The limited check of whether Surfwatch blocked some of the sites identified above was undertaken without any prior knowledge on my part as to whether the Surfwatch would in fact block the Web addresses I entered into the computer. Indeed, as noted, several sites I entered, such as Playboy.com and others listed on the "Steamy Erotic Links" Web site, were in fact blocked by Surfwatch during the course of my check. However, working over the course of just a few hours, I located at least 9 domestic sites (and four sites that apparently originated

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[2] During my deposition on April 8, 1996, I did not recall whether the images listed at Exhibit 51 were in fact blocked by Surfwatch, because I had not attached sample images to Exhibit 51. I have since gone back and determined that, with Surfwatch running, these images were not blocked on April 9, 1996. See Exhibit 51, pages 3-4 (also identified at Exhibit 4, pages 5-6).

overseas) containing sexually explicit material that were not blocked by Surfwatch.

51. In addition, I understand that among the methods Surfwatch uses to block sexually explicit sites is on the basis of specific "key words" such as "sex" that may be located in the Web address. I was not previously aware of Surfwatch's list of key words and, thus, did not seek to deliberately avoid such key words in Web addresses. In this limited check, I simply took the list of Web sites found in my prior, unrestricted search, and sought to find a few examples that were not blocked by Surfwatch.

52. In my opinion, with additional time and searching, more sexually explicit sites that are not currently blocked by Surfwatch would be identified. This is due in part to the fact that the number of such sites continues to grow. New sites are added which may not have been previously identified by Surfwatch or which may not contain one of the current "key words" in its Web address that Surfwatch blocks.

53. Also, to the extent a Web site is being blocked by Surfwatch based on the recognition of a key word in an existing file or directory, I believe that such file or directory name may easily be changed. Under this scenario, the site would not be blocked by Surfwatch unless it was again specifically identified. For example, part of the site identified at Exhibit 16, "The Studman's Homepage," was blocked by Surfwatch when I conducted my limited experiment. This site is identified by the domain name, directory, and subdirectory of: "**weiss.che.utexas.edu/~poland**/pics/". Surfwatch blocked access to the "Supermodels" files which contains the images at Exhibit 26, pages 2-5. However, Surfwatch did not block the Studman's home page at Exhibit 26, pages 7-9, which is designated by the *same* domain name and directory of "**weiss.che.utexas.edu/~poland**/master.html." This indicates that this site was being blocked at a level below the domain address. Under this blocking scenario, sexually explicit images may be moved into a separate subdirectory or a file name. For example, at Exhibit 26, page 8, the Studman's site has a link to a "SURPRISE Pic of the Week" updated on March 19, 1996. The subdirectory and file for this picture is "weiss.che.utexas.edu/~poland/**icon/sample.gif**". Sexually explicit images could be included in a separate file such as this, and until such a separate file were identified, it would not be blocked by Surfwatch.

54. As a law enforcement officer who has been involved with a number of investigations concerning sexually explicit materials, I support the efforts by Surfwatch and other similar entities that are providing parents a tool to shield children from access to sexually explicit material online. In my opinion, however, user-based controls, while commendable, will inevitably be trying to keep up with the addition of new and revised sites, and in the long term may face attacks from those who may distribute information on how to disable the program. Also, based on my experience in law enforcement in this area, which includes teaching classes to officers at beginner levels, and also substantial anecdotal information from talking to parents about their children's use of computers, my opinion is that many parents do not have the same level of sophistication with computers as many minors do today—nor the time to supervise their children's use of computers online. For this reason, in my opinion, relying on parental controls and supervision will only be a part of the solution to restricting

access by minors to material that is inappropriate for them.

I swear under penalty of perjury that the foregoing is true and correct:

DATE: April 9, 1996

/s/ HOWARD A. SCHMIDT
S.A. HOWARD A. SCHMIDT
Office of Special Investigations
Computer Crime Investigations
United States Air Force

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civ. A. No. 96-0963

AMERICAN CIVIL LIBERTIES UNION, ET AL., PLAINTIFFS

v.

JANET RENO, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
DEFENDANT

CIV. A. No. 96-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.,
PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
DEFENDANTS

DECLARATION OF DR. DAN R. OLSEN, JR.

I, Dan R. Olsen, Jr., do hereby state as follows:

1. I am currently Chair of the Computer Science Department at Brigham Young University (BYU) in Provo, Utah. I have been a member of the faculty at BYU since 1985, holding successive positions as Assistant Professor (1985-86), Associate Professor (1986-90), Professor (1990-present), and serving continuously since 1992 as Chair of the Department. The

Computer Science Department at BYU consists of 22 faculty and 700 students.

2. As of January 1996, I have been appointed as Director of the Human Computer Interaction Institute at Carnegie-Mellon University in Pittsburgh. In that capacity, I expect to be involved in user interface research and interaction over the Internet. Beginning in July 1996, I expect to be on leave from BYU for the duration of my appointment at Carnegie-Mellon.

3. My educational background includes a Ph.D. in Computer and Information Science from the University of Pennsylvania (1981), an M.S. in Computer Science from BYU (1978), and a B.S. in Computer Science from BYU (1976). Prior to joining the faculty of BYU, I held the position of Assistant Professor at Arizona State University (1981-84). I also worked at the Burroughs Corporation as an Engineering Programmer (1978-80).

4. My principal areas of research and teaching include: (i) network based interaction; (ii) automatic generation of graphical user interfaces; (iii) visual and graphical programming systems; (iv) high level programming languages; (v) computer graphics. I have also worked extensively on electronic libraries for genealogical research.

5. My curriculum vitae (attached hereto) lists my authorship of 40 principal publications, including a work entitled *User Interface Management Systems: Models and Algorithms* (Morgan Kaufman Publishers: San Mateo, California 1992).

6. Specifically with respect to the Internet, the World Wide Web, and other "on-line" applications: (i) "Interactive Net-Services on the WWW [World Wide Web]" (June 1995); (ii) "Distributable Interactive

Objects" (June 1995) ; (iii) "Implementing a Graphical Multi-User Interface Toolkit" (Sept. 1993); and (iv) "Software Architecture for Digital Family History Libraries" (available online at http://FHiTL.cs.byu.edu/ FHiTL/).

7. As a faculty member at BYU, I have been responsible for obtaining approximately $2 million in funded research projects in the field of computer science, from such diverse sources as the National Science Foundation, Novell, WordPerfect, Digital Equipment Corporation, IBM, and the Utah State Center of Excellence in Computer Based Education Technologies.

8. My professional activities include serving as Editor in Chief of the Association for Computing Machinery (ACM) Transactions on Computer Human Interaction (1992-present); Associate Editor, Human Computer Interaction (1990-present); as well as a series of positions as Conference Chair, Program Chair, and Program Committee Member on various symposia hosted by ACM's Special Interest Group on Graphics (SIGGRAPH), Special Interest Group on Computer Human Interaction (SIGCHI), and on the User Interface Software and Technologies (UIST) conference.

9. In the course of my duties as Chair of the Computer Science Department faculty, as well as in my professional research interests and other duties, I have developed substantial expertise relating to the technical standards and protocols adopted for the Internet. As part of this research I have developed several client-server systems that assist people in interacting over the Internet. This has included developing special purpose protocols, exploitation of the World Wide Web, and integrating research software

with World Wide Web server and client software. I am knowledgable concerning the major Internet applications in general use today, including those referenced in the Joint Stipulation of the parties to this consolidated litigation (filed with the Court on March 19, 1996) ("Jt. Stip.").

10. In preparation for my direct testimony by way of this written declaration, I specifically have reviewed portions of the hearing transcript of the first two days of testimony on plaintiffs' combined motions for a preliminary injunction (March 21 and 22, 1996), as well as the deposition testimony and declarations of Mr. Scott Bradner, Prof. Donna Hoffman, and the first day of deposition testimony of Mr. Albert Vezza. I have also reviewed various briefs and other filings in these actions. I base this declaration on my own knowledge and experience, as supplemented by analysis conducted with colleagues at BYU.

I. NATURE OF THE INTERNET

11. To understand the Internet one must understand the way in which computers cooperate to achieve communication, the types of communication that are possible and the ways in which users of the Internet can reference and access materials.

A. *The U.S. Government Founded the Internet*

12. The Internet is not a spontaneously produced anarchic community. The Internet is the product of years of government investment and support. Arpanet was created as a tool for the military and to support military research and contractors. When the

value was perceived as being larger than for military purposes alone, Arpanet was superseded by NSFnet, again with government sponsorship and support. This nurturing influence of the federal government is documented in an article by Vint Cerf, one of the early Internet developers (*see* http://www.skywriting.com/cerf.html). Moreover, the history of the Internet has shown that standards developed in the United States frequently are adopted around the world. The privatization of the Internet is a very recent phenomenon.

B. *How Communication Occurs on the Internet*

13. In order for communication to take place over the Internet two pieces of software are required: the *client* and the *server*. Client software is what most users will see when they interact with the Internet. This includes software such as web browsers, telnet (to log onto other machines), mail programs, etc. Server software is rarely seen by ordinary users. This software generally runs continuously on some machine and waits for requests from client software at other machines across the Internet. In order for communication to occur, client software must connect, via the Internet with server software, make a request of the server and receive a response.

14. Client/server communication in various forms is the essence of most Internet software. In order for client software to communicate with a server, they must both be adhering to some standard protocol. The protocol is the communication language which defines how each side can talk to the other. For Internet communication to occur, both the client software and the server software must correctly adhere

to the standard protocol. If a client refuses to connect and make a request, no communication occurs. If a server refuses to respond to a request, no communication occurs. If one or the other does not obey the standard, no communication occurs.

C. *Standards are the Heart of the Internet*

15. A major key to the success of the Internet is the use of standards and the standards making process. The Internet does not dictate how various vendors, students, professors or users implement software which uses the Internet. The success of the Internet is that the steering organizations have defined a set of communications standards and left the implementation strategies open. Without such standards and the standards process there is no Internet. The Internet is not anarchy. Thus, the setting of additional standards would not be a novel kind of activity.

D. *Types of Communication*

16. To further understand how people use the Internet it is helpful to define four classes of use: information serving, direct messaging, message broadcast, and specialized uses. Information serving occurs when some information provider makes information available on the Internet using some standard server protocol and software. Examples of this are File Transfer Protocol (FTP), HyperText Transfer Protocol (HTTP) and Gopher. *See* Jt. Stip. ¶¶ 30-48. The mechanisms used for serving or publishing information in these three protocols are slightly different but the essential nature of the communication is the same. The information provider places the information in such a way that it is available to the server software. The server responds to client requests and makes that information available to the user.

17. A related form of information access is "telnet," where one can remotely log on to a computer to obtain information. *See* Jt. Stip. ¶ 29.

18. Direct messaging is when some individual creates a message which is sent to a particular individual or some selected group of individuals. The prime example of this is e-mail. *See* Jt. Stip. ¶ 23. This type of communication has a strong similarity to phone communications, in the sense that one may or may not know who is on the other end of the line but the conversation is highly restricted in terms of who is participating.

19. Message broadcasting occurs when a user creates a message and has it sent to a large group of people who probably are not known to the sender and whose identity is generally out of the control of the sender. Examples of this are e-mail to e-mail exploders such as "listservs" or posting to Usenet newsgroups (net news). *See* Jt. Stip. ¶¶ 24-26. In such communications, the sender knows the purpose for which the newsgroup or e-mail list was created, but in normal usage does not know who the individual readers will be. Typing a message in an Internet chat room is a similar form of message broadcast. *See id.* ¶ 27.

20. The final type of communication on the Internet consists of specialized protocols generally not seen by users, such as name negotiation or system configuration information. Also included in this group are protocols for coordinating manufacturing,

processing monetary transactions and others. These types of communication are not generally for personal or organizational speech and can be ignored for the purposes of this case.

21. It is worth pointing out that simply because a particular protocol is technically inappropriate for some kinds of communications over the Internet does not mean that those communications are necessarily hindered. For example, it is technically impractical for a library to make its card catalog readily usable via FTP. It is quite easy, however, to do this using HTTP. In terms of the content of the catalog, however, FTP and HTTP are functionally identical. Conversely, HTTP is technically not an appropriate communication medium for very large files. FTP does a much better job for large files.

E. *Internet Naming*

22. A key point I wish to emphasize is that naming is a fundamental component of the Internet and the mechanism by which almost all communications are established. I will show in a later section how a simple convention within the standard Internet naming mechanisms can support a wide variety of content identification techniques.

23. In Internet communication almost everything has a textual name. The only notable exception to this is Internet Protocol addresses (known as IP addresses), which are integer numbers. In fact IP addresses are infrequently used because a site or domain name (which is textual) is easier to use. As Mr. Bradner has testified, *see* Hearing Tr. 22:21 (Mar. 21, 1996), future IP addresses will have four times as many digits and will be used even less frequently by

ordinary users. In order to request a service, contact a computer, access a file, or mail to a user, one must specify a name. Such names are essential to Internet communication because they are the means by which users express their intentions in a form that Internet software can understand.

24. A key innovation of the World Wide Web is the Universal Resource Locator (URL). The URL standard unified the naming of a large number of the Internet resources and protocols already in existence. The URL makes it possible to reference explicitly individual pieces of the Internet universe of information and services.

25. The following are examples of possible URLs. The nature of these names will be discussed later in this section of my declaration.

An HTML document on an HTTP site
"http://mit.edu/docs/AboutMIT.html"
Domain name for the server: "mit.edu"
Directory name: "docs"
File name: "AboutMIT.html"
A file on an FTP site
"ftp://somewhere.busi.com/programs/calc.exe
Domain name for the server: "somewhere.busi.com"
Directory name: "programs"
File name: "calc.exe"
A news group
"news:soc.couples.wedding"
A collection of news groups: "soc"
A smaller collection: "soc.couples"
A news group: "soc.couples.wedding"

An e-mail address
"mailto: george@hitech.com"
A user name: george
A domain name for a computer: "hitech.com"
A file on a Gopher site
"gopher://www.where-are-u.edu/info-mac"
A domain name: "www.where-are-u-edu"
A file name: "info-mac"
A telnet session
"telnet://library.byu.edu/"
A domain name for the library's computer: "library.byu.edu"

As the above examples show, a large number of services are accessed via a simple naming mechanism. It is important to note that these names are naturally drawn from the individual protocols themselves. URLs, simply, provide a general way of naming all of them.

26. In the following sections I will discuss each of these types of names in more detail. Following that I will present a simple scheme for using such names to tag sexually explicit materials. There are possibly many other ways to accomplish this same goal—including using portions of the "Platform for Internet Content Selection" ("PICS") system described in the Jt. Stip. ¶¶ 49-53, and below.

27. *Domain names.* Domain names are used to specify computers, groups of computers, as well as some organizational information. Domain names provide a name outline for most of the computers publicly accessible on the Internet.

28. At the highest level, domain names are registered with InterNIC in the US (and other agencies in Europe and Asia), which ensures that such names are unique across the Internet. For example, Brigham Young University has the domain name "byu.edu" which is uniquely registered to the University. Other such global domain names are "aol.com" for America Online or, to use a real example, "cyberporn.com." Such global names are relatively easy to get.

29. The power of domain names, however, lies in the fact that only the global names are centrally registered. Each organization or individual that has registered a global domain name now has the power to create a whole range of names.

30. For example, BYU has allocated the name "cs.byu.edu" to its Computer Science Department and the name "math.byu.edu" to its Mathematics Department. The Computer Science Department has in turn used its name to allocate "issl.cs.byu.edu" as the domain name for the server in the Interactive Software Systems Lab with the name "lal.cs.byu.edu" being allocated in the Laboratory for Applied Logic. The Computer Science Department at BYU can create as many names for computers and services as it wants without consulting anyone else on the Internet for permission, as long as it appends its own domain name "cs.byu.edu" to the end.

31. Each individual piece (separated by ".") of a domain name consists of letters, hyphens or digits. *See* RFC 1035 (Internet standard for domain names). This gives managers great flexibility to create names for any purpose they choose.

32. *IP Addresses.* It is impossible to communicate with any computer on the Internet without knowing its IP address. Such IP addresses are currently 32

bit integers which are very difficult for people to remember and use. Internet protocols exist, however, for taking a domain name and looking up the IP address of the computer that it references. Such lookups are central to the functioning of the Internet.

33. It is also possible in most cases to use an IP address to obtain a domain name that corresponds to that computer. It is almost always possible for the owner of such a computer to make sure that the computer's IP address can be converted into a domain name. It is therefore not difficult for any server to make sure that the clients that it communicates with know the server computer's domain name. If, for example, a minor identifies Internet material by IP address, then any blocking software could ask for the domain name of the IP address and perform screening based on that name.

34. *Directory and file names.* Information serving protocols of the type which dominate the World Wide Web (HTTP, FTP and Gopher) function primarily in terms of files. On all such systems individual items can be arranged into groups, normally called directories or folders. All such files have names and can be grouped together in directories that have names. Directories themselves can also be grouped together to form larger collections. A given item is identified to an information server, such as HTTP, by naming all of the directories that the item is in, starting from the highest to the lowest.

35. Consider for example the universal resource locator (URL) "http://home.netscape.com/home/whats-new.html." This locator identifies a document called "whats-new.html." This document is found in a directory called "home" on a system named "home.netscape.com". There could be multiple files in this

directory, such as "whats-cool.html" and "netscape-galleria.html" which respectively have the URLs: "http://home.netscape.com/home/whats-cool.html" and "http://home.netscape.com/home/netscape-galleria.html."

36. In HTTP it is possible for information to look like a file to a client when in actuality it might be generated temporarily from some database. The point, however, is that for all information serving forms of communication, resources are named by individual items' names.

37. *News group names.* Newsgroups also have names. These names, like directory names and domain names, are arranged in a hierarchy which collects together related news groups. Note that each newsgroup has a name which is unique within its collection and each collection has a name which is unique within a larger collection. For example, the newsgroup "financial-aid" is in the "college" collection which is in the "soc" collection. The full name for this newsgroup is "soc.college.financial-aid".

38. *Mail names.* In order to send e-mail to someone, one must have a name for them. This almost always consists of a username@domain_name. For example "Freddy@cs.byu.edu" is the address of a fictitious user named "Freddy" who receives e-mail at a machine called "cs.byu.edu". On many systems the user names are assigned by the system administrators. On other systems such as America Online, the users themselves select their names provided the name is not already taken.

39. In some cases the name is not that of a user but is the name of a mailing list. For example there is a mailing list about Internet genealogy called "genweb@UCSD.EDU". This is the "genweb" mail-

ing list hosted at the University of California at San Diego. Mailing to genweb will actually cause the mail to be forwarded to all of the people who have registered their personal mail address as part of this mailing list.

40. *Internet Chat.* In Internet Relay Chat (IRC) every topic or "chat room" has a textual name. Users select the conversation that they want to be involved with by specifying the textual name. It is also possible to list such "chat rooms" by name. On many chat servers it is possible for users to create new "chat rooms" simply by typing a new name to enter that room.

F. *Summary of the Internet*

41. The essence of the Internet is standards. Without standards there is no Internet. This standards process and the fundamental standards on which the Internet rests were created with support of the U.S. Government, rather than randomly or spontaneously. Although the Internet today supports a blossoming array of types of communication and content being communicated, it is founded on a disciplined standards process.

42. Everything on the Internet of significance to normal users has a textual name by which it can be referenced. These names are fundamental to the functioning of the Internet and are found in one form or another in every kind of user-oriented Internet communication.

II. USING AVAILABLE TECHNOLOGY FOR ON-LINE CONTENT IDENTIFICATION

43. I will show that there is at least one simple mechanism for online content providers to identify or tag information they create, and that other solutions are also possible. These solutions require minimal, if any, new technology, use existing Internet protocols, and have no impact on materials deemed suitable for minors.

A. *Tagging of Sexually Explicit Material*

44. It is possible to tag sexually explicit material in a fashion that is simple for other Internet software to detect. This tagging scheme should also use existing Internet technologies. The purpose of this discussion is to show that such tagging is technologically simple by showing one way in which it could be done, without the government mandating how any particular tagging should be done. That is, implementation would be left to the Internet community and to the content providers themselves. The technique discussed here could be in place in a month or less.

B. *Creating Tags*

45. In order to tag sexually explicit content there must be some agreement upon a text, symbol or code which can be easily recognized and can be embedded in a large variety of Internet traffic. Exactly what this code should be is irrelevant to the argument. It is not even important that there be only one tag so long as the number of tagging schemes is not large.

46. For purposes of this discussion the string "-L18" will be used as an example. This is an acronym for "not Less than 18." This string was chosen because it is compatible with a variety of Internet standards, is easy to remember, easy to detect and not readily confused with other purposes. The strings "XXX," "X" or "adult" could be used just as easily. It should be left to the Internet community to make their choice as to what "tag" should be used.

47. A scheme could also be devised to encode varying tags depending on the nature of the material in question. One might create a multilevel scheme so as to identify material which is not sexually explicit, that would nevertheless be considered to require parental guidance.

48. The string "-L18" is compatible with the conventions and requirements for domain names, file names (*e.g.*, DOS, Macintosh, UNIX, Windows, NT), user names, and chat room names, as well as any other naming scheme that conforms to general Internet usage.

C. *Tag Uses*

49. The key to such a tag is that everything on the Internet has a name. The string "-L18," or other tag strings, can be added to any name to flag that item or collection of items as inappropriate for minors. This requires no new Internet technology. An extensive, but not exhaustive list of possible uses follows.

50. The mechanism described here can identify sites, directories, or individual items as sexually explicit, providing wide flexibility in the ways people structure their communications. By contrast, many

third party screening techniques, such as Surfwatch, block entire sites, not portions of them.

51. *Tagging sexually explicit sites.* The "-L18" string can be placed in any domain name to identify the materials served by that site as sexually explicit. For example, the site "www.cyberporn.com" could be renamed "www-L18.cyberporn.com". This would identify this particular site as "adult only." In the case of Cyberporn, the web site's owners may decide that everything that they do is sexually explicit and they do not want to worry about labelling anything. They could have registered the domain "cyberporn-L18.com" instead of "cyberporn.com." Any domain or site that Cyberporn wishes to create as part of its business will thus have "-L18" in its name and will be clearly identified as adult only.

52. Using this technique, InterNIC could also create adult only areas by using "L18" as a global domain name. In such a case Cyberporn could register the name "cyberporn.L18".

53. *Tagging sexually explicit files.* Instead of tagging entire sites, individual files can be tagged as sexually explicit. For example, suppose there is a file whose URL is "http://www.adult.com/nakedwomen.html". Suppose further that the site "www.adult.com" was also serving materials which were not sexually explicit. The content provider would not want to have their entire site identified as sexually explicit. Instead they could rename the file "nakedwomen.html" as "nakedwomen-L18.html". The file is clearly tagged as sexually explicit without labelling the entire site.

54. *Tagging directories of sexually explicit files.* It may be useful to create an "adult-only" area within a particular site. Take for example the URL "http:/

/www.aol2.com/erotica/ nakwom.htm". It is probable that the owners of the "www.aol2.com" site do not want to make the entire site restricted only to adults. They also may not want to label every single sexually explicit file. In fact, they have created a directory called "erotica" in which to store such material. Changing this directory's name to "erotica-L18" clearly tags it as sexually explicit. Since computers cannot actually read (they only match characters) the tag "-L18" is much easier to detect than trying to enumerate a list of "marketing words," such as "erotica," that content providers may use in their directory names. (The existence of such a tag would also prevent mistakenly identifying an information page on "breast cancer" as sexually explicit because it contained the word "breast".)

55. Tagging URLs. Note that domain names, directory names and file names are all part of the URL which identifies the file to be retrieved. This same information is used in the World Wide Web, Gopher and FTP. All of these forms of tagging in essence will place the string "-L18" (or some other standard string) somewhere in a URL. Recognizing the tag is a simple matter of looking for "-L18" anywhere in a URL to know that the referenced material is inappropriate for minors. Note that creating such a tag requires no change to any current Internet software.

56. For the purpose of this declaration, I assume that the vast majority of Internet content is not within the scope of the Communications Decency Act (CDA), and thus would be completely unchanged by this proposal. The contents of the files, be they images, movies, animations or executable programs, are also unchanged by this approach, thus requiring

no change to existing standards and no new software development.

57. The L18 scheme described here and the PICS model clearly tag any URL regardless of how a user reached that document. There are no "back doors" by which materials would be untagged, other than by failure to "tag" that portion of a provider's material. These forms of tagging address concerns expressed over the blocking not only of "home pages," but also to materials reachable from such home pages.

58. *Tagging portions of HTML files.* In some cases it may be useful to tag only a portion of a file as sexually explicit. For example, a content provider on the World Wide Web may have a portion of a file which the provider may believe should be excluded from minors. The Hyper Text Markup Language (HTML) provides a syntax for embedding tags in text. Take for example the text "I want to go home". The tag indicates that bolding is to be turned on and indicates that it is to be turned off. The result is that most HTML display routines will display the word "home" in bold face type. The HTML standard could be extended (without impacting any existing HTML) to include the <L18> tag. For example, the string <L18>random dirty words</L18> is now tagged as sexually explicit and it would be possible for web browsers not to display the text if a minor is using the browser.

59. For a portion of a file so tagged, the material could be surrounded with the L18 tag and thus clearly identify that section as not suitable for minors. Note that this would require a modest amount of additional programming in the browser client software to recognize the tags. Embedding the tags on the part of content authors would not require any new technol-

ogy development. The effort required for an Internet author to tag some section of a document as sexually explicit is no larger than the effort required to put the same section in bold face type.

60. *Tagging e-mail messages.* Every e-mail message automatically contains the user name and the domain name from which the e-mail originated. If the domain name of the site sending the mail contains the string "-L18" (for example "cyberporn-L18.com") then all mail messages from that site are tagged as sexually explicit. This technique could be used for e-mail "sex talk" sites.

61. Suppose for example a company identified as "Adult.com" provides a variety of online services of a sexually explicit nature. One of those services might be explicit e-mail on sex. The company's staff could be given the user name "sex-L18". Thus all of their e-mail would contain "From: sex-L18@Adult.com". The messages are all clearly tagged as not suitable for minors.

62. The hypothetical company identified as "Adult.com" may, however, determine their messages are generally appropriate for minors and only on occasion are their messages graphic enough to require screening. Every e-mail message can contain a textual subject line. If their staff believes that an explicit adult message is necessary, they can include "-L18" in the subject line to mark clearly that particular message as inappropriate. There is no new technology required for the tagging of e-mail messages. The effort required to tag a specific e-mail message as not suitable for minors is four (4) key strokes.

63. *Tagging mailing lists.* Some groups maintain e-mail lists for which membership is either manually

created or in which users can join or leave on their own. For specific messages sent to such lists the tagging techniques described above could be used. On the other hand, the list "dirty-talk-L18@all. adults. com" could be created. Any message sent to this list would be forwarded to the e-mail in box of all members of the list. When it arrived in that in box, all such messages would be clearly tagged with "-L18."

64. *Tagging newsgroups.* News group names can be tagged. Any news group or collection of new groups can add "-L18" to their name to show that minors are excluded.

65. *Tagging news group postings.* Sexually explicit messages could still be posted to any new group using "-L18" in the subject line.

66. *Tagging chat rooms.* Every Internet chat room has a name. Chat rooms for sexually explicit conversations can be named with "-L18" in the name and everyone is clearly warned.

67. *Other tagging schemes.* There are other ways in which content authors can tag their materials. The "-L18" scheme described above is simply a demonstration that such tagging is possible without damaging the fabric (or "flow") of the Internet, as Prof. Hoffman has claimed. *See* Hearing Tr. 14:14—15:12 (Mar. 22, 1996).[1]

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[1] Other more comprehensive schemes such as PICS would work as well, provided that authors, not screening services or parents, are legally responsible for sexually explicit material. The serious technical problems that arise when trying to block indecent material without the cooperation of the authors will be discussed in a later section of this declaration.

D. *Tagging Effort*

68. Mr. Bradner has stated that the effort required to put tags onto existing Internet materials is too time consuming to accomplish. *See, e.g.*, Hearing Tr. 63:9-14 (Mar. 21, 1996). It is claimed that the burden of such tags is too great a load for content providers to bear. My premise here, however, is that the vast majority of Internet material requires no such tagging effort.

69. *Newly created Internet materials.* I agree with Mr. Bradner that for content providers creating new materials the tagging scheme described above is trivial. *See* Hearing Tr. 155:17—156:19; 163:10-12 (Mar. 22, 1996). However, content providers who do not choose to add "-L18" to file names could still post them in a labelled "adults-only" area.

70. *Tagging materials on the WWW.* Tagging of files is already required on the WWW. When an HTTP server retrieves a file to fulfill a request from some client, that server must give the file a type identifier so that the client knows what kind of data is being received and what format that data is in. It is computationally expensive to require client software to figure out from the content whether a file is hypertext, a GIF image, and MPEG movie for some other piece of data.

71. Unfortunately most HTTP servers do not know what the file contents are either. HTTP servers figure out the type of the data by looking for special tags, call extensions, which are embedded in the name. It knows that "Help.html" is an HTML file because its extension is "html." It knows "Mountains.gif" is an image encoded in GIF format because of the "gif" extension. Without such tags encoded in

file names, the World Wide Web would not work. Tagging by the authors is required.

72. The above scheme for tagging Internet materials is not the only scheme that could be used. It was presented as a scheme which would require no new technology to be developed. The PICS architecture which is supported by a wide variety of industry groups could also be used by authors to tag their materials.

73. In PICS a request on a server from a client can include a request for the rating of the material to be returned. A rating system called "CDA-compliance" (or some other name) could be created within the PICS architecture. Internet content providers could include such rating information directly in their HTML documents or using a special database. Using either approach PICS presents a widely supported developing technology which would allow content providers to accept responsibility for preventing access by minors to their sexually explicit materials.

74. *Tagging for libraries.* There are two issues involved in tagging library material, namely (a) the use of sexually explicit terms in library catalogs, and (b) the content of actual online books. With respect to catalog material, finding all books with sexually explicit words in their titles through an automated word search would not be difficult.

75. With regards to online content, the effort required to place any given item on the Internet is quite large compared with the effort required to tag such an item. The classification and cataloging of books is one of the major things that libraries do. Every book that enters a library must be catalogued, indexed and stored. The important point is whether tagging an

assumed small number of sexually explicit online library materials imposes significant additional costs.

76. Some libraries currently use the Library of Congress catalog number as a prescreen for materials that should be placed in locked cases. For example, the LC number RC560.S23 indicates masochistic sex which may highlight materials that librarians should check for their suitability for minors. The Library of Congress catalog number could be used similarly to aid in classifying online materials. In addition, organizations which provide cataloging service sharing among libraries (*e.g.*, Research Libraries Group or OCLC), could also help. The purpose of such services is for libraries to share cataloging chores with each other. Since such mechanisms for classifying already exist, and there is no reason to believe that such mechanisms cannot handle the tagging of sexually explicit materials.

E. *How to Use Tags to Block Sexually Explicit Materials*

77. Having shown that there are a variety of ways in which Internet material can be identified as sexually explicit, and that tagging is inherent in the way that the World Wide Web already works, this section will show how such tags can be used to prevent minors from accessing such material. There are three major models presented here. This is not intended to be a complete list of possibilities, but rather only a set of examples of how blocking can be accomplished.

78. These examples of blocking technology form a continuum of levels of provider responsibility. In the first model, a provider's server software is configured

to serve sexually explicit material only to requesters known to be adults. In the second model, a provider only accepts requests for adult materials from sites which are trusted proxies. These proxies make such requests on behalf of users which the proxies certify are adults. In this technique the provider has delegated the adult verification inquiry to these trusted proxies. The final form of screening is where the provider assumes that the client software is blocking sexually explicit material if the user is a minor. None of these approaches relieve the provider of the responsibility to identify sexually explicit material. The only responsibility that has been delegated is the verification of the user's age.

79. *Self verification approach.* The most secure approach is for the server software of the content provider to refuse to serve material tagged as sexually explicit to any requester that is not known by the server to be an adult. The server software can identify sexually explicit material as any URL with "-L18" (or some other standard tag). This approach requires that the server must be capable of determining if the requester is an adult.

80. *Account/Password verification of adults.* One approach for verifying adults is to provide users with accounts and passwords on the server machine. If the provider verifies that the user is an adult and issues a password to that user, then server software can be configured to verify the user before offering service.

81. All FTP servers require user names and passwords before serving files. In fact, only the informal convention of using "anonymous" as the user name allows unknown users to get access to files or directories via FTP. The user account mechanisms on most machines will restrict users to particular

directories and prevent unauthorized retrieval of files. Such mechanisms could restrict access to adult-only material without interfering with the use of anonymous FTP for all other materials. There is no new technology required to accomplish this.

82. Many HTTP servers can restrict access to particular files and directories. In particular, the Netscape HTTP server explicitly provides for blocking of all URLs which match a particular pattern unless the user has been verified by name and password. Files and directories whose names match the pattern "*-L18*" can be identified by the server and only served upon receiving a proper name and password. *Cf.* Declaration of Scott O. Bradner ("Bradner Decl.") ¶ 79 (no current Internet technology is "configurable to block material with such tags").

83. If a site wants to require user name/password access to adult materials, there is no new technology required. Operating systems have long provided for and/or required user logins.

84. *Hash codes to replace user database maintenance.* If providers do not want to maintain a database of users, a hash code technique can be used. Suppose that the server provides a web page where users can apply for adult access. Users can enter their name and credit card number. This information can be used to compute a pseudo-random number (*i.e.*, the "hash code"), from the user's name and convert that number into an 8 character password. In the future the user enters their name and password. The hash code is recomputed from the name and compared against the password. If there is a match, then the user is known (within a reasonable doubt) to be the same person who earlier registered as an adult.

85. The key point of this discussion is that it is possible to register users without managing a large database of users. The message digest capability offered publicly in the software library named "RSAREF" would fulfill this purpose exactly. *See* http://www.rsa.com.

86. The CGI (Common Gateway Interface) code required to generate and check the passwords using the hash code technique would take less than a week to write and install on almost any HTTP server. The total cost should be less than $5,000 if the code was written from scratch. This cost would possibly be higher if the very secure RSA approach was used. This could be alleviated, however, if RSA made such CGI code available in the same way that they do with their RSAREF code. Given the nature of the Internet, such code would soon be posted for free and providers would not need to write any new code.

87. *Web service providers can provide blocking services.* Individuals who only want to publish content and do not want to manage an HTTP server must currently pay for some commercial entity to do their web service for them. Given the nature of the Internet marketplace, services which provide "adult verification" for material marked as sexually explicit would soon be expected to proliferate. Such server-level blocking of tagged materials would become no more complicated than any other web-service operations.

88. *Determining which applicants are really adults.* Before assigning a user name and password, a service must determine whether the applicant is really an adult. The law provides for credit cards as a means of verification. Services such as IC Verify ("www.mktmkt.com/ic.htm") advertise a computer

based mechanism for processing credit cards in less than 30 seconds. Processing a charge of $1 through this mechanism would verify whether the applicant is an adult. There is already a developing SEPP (Secure Electronic Payment Protocol) for MasterCard and Visa which will provide such services over the Internet ("http://www.mastercard.com/Sepp/sepptoc.htm"). Such charges for verification need only be performed once when a user applies for access. After that a user can provide the name and password issued at registration time for their access.

89. For information providers who do not want to develop their own adult verification service, they can post their information with a service that does provide such verification. An alternative is use of a validation service such as Validate ("http: //www.zynet.com/-validate"), Adult Check ("http: //www. adultcheck.com"), Adult Verification System ("http: //www.LANDSLIDE.Com/houdini/Adult_Access.html") or Verisign ("http://www.verisign.com"). Instead of adult verification being a cost for an information provider, some of these verification services offer "bounties" of $2.50 to $3.00 for each provider that refers a new registrant to the verification service.

90. *Internet commerce.* To assert that it is technologically too hard for an information provider to determine personal or credit card information is to say that shopping over the Internet is too difficult. In order for anyone to sell anything to anyone over the Internet, the seller must determine who the buyer is so that payment can be received. This basic functionality for commerce already exists on the Internet and will only improve in cost, speed, reliability and simplicity. Even if an information supplier does not

want to charge for access, it does not seem unreasonable to charge a very small amount for initial registration. Digital signature or certificate technology is already being developed for Internet commerce purposes which could clearly identify adults for purpose of screening materials.

F. *Trusted Proxy Approach*

91. A second possible approach to preventing marked Internet materials from reaching minors is to accept requests from trusted proxy servers. To understand this approach, we must first define what a proxy server is. Secondly, I will show how proxies and providers can cooperate so as to give assurance to the provider that minors will not receive material designated for adults.

92. *Proxy servers.* When client software, such as a WWW browser or an FTP client, interactively receives a request from a user, the client software will make contact with the provider's server and request information. It is not always desirable for client software to negotiate its own Internet contacts. In many cases organizations do not want individual users to make direct contact with servers.

93. The most notable examples of where organizations do not want direct Internet contact are in corporations. In such cases, the corporation wants to control the information that individual employees can send out of the company (to protect secrets) and the information coming in (to protect liability and system security). If the client software of each employee can make its own contact with the outside world, there is little control of information possible. One alternative is to separate the company network from the Inter-

net. This cuts off the company from a major informational medium, which is probably not a good idea.

94. One approach which allows clients to access the Internet in a controlled way is a proxy server. A proxy server is a piece of software which will make requests on behalf of a client rather than allowing the client to make direct contact. This is similar to a company requiring that all contract negotiations go through the company attorney. Employees who want to execute a contract with some outside party make their request to the attorney, who in turn negotiates the request with the outside party. The reason for having the attorney serve as the proxy is to ensure that all legal requirements are met and legal exposure is avoided. This is very similar to the purpose of a proxy server.

95. When using a proxy server, client software does not contact any server software other than the proxy. The proxy checks the request against some approval criteria for acceptability and then, if appropriate, makes contact with the actual server and forwards the request. The server sends the request back to the proxy who then responds to the original client.

96. Let us suppose that there was an Internet service provider that allowed users to log in over phone lines or some other communication medium. Let us also suppose that such a provider went to the small additional effort of tagging each user account as minor or adult. Such a provider now has electronic knowledge as to the adult status of any user logging into its service. It is possible for the provider to share this knowledge with content providers.

97. Many such providers do not give their users direct access to the Internet. What they give them is

a proxy server. We now have all requests from users of this service going through the service provider's proxy which knows whether the client is an adult or a minor. Such a provider could thus verify the adult status of the request as a service to the content providers.

98. *Proxy - provider communications.* A server could take all steps described in the previous section to verify adult status on its own. In addition, if America Online, CompuServe and Microsoft Network all advertised that they would not create requests on behalf of users who are minors which contained the string "-L18" (or any other standard string) in the URL, they would become trusted proxies in the sense that the content provider can treat the service provider's proxy software as an adult. This would mean to the content provider that a huge number of potential users do not need to be verified.

99. *Who are the trusted proxies?* A remaining problem with this approach is that a content provider's software needs to know which requests come from trusted proxies. One approach is to register each proxy as an adult user in the same way that the server would register an individual user. This is an improvement because there are far fewer proxies than there are users. Since proxies are relatively few in comparison to users, they could register themselves with various registration services and thus reduce the burden on the content provider of identifying or tracking such trusted proxies. Any proxy which registered would be warranting that they are doing adult screening.

100. *Remaining implementation issues.* The question still remains as to the effort required to implement such trusted proxies. In our lab we down-

loaded the Netscape proxy server, installed it and configured it to block URLs containing "-L18". This is standard software, readily available and widely used. The entire process, including obtaining the software from Netscape, took less than four hours. This would be all it would take for Netscape (and, by extrapolation, Microsoft as well as other major "players" in the server software marketplace) to protect children from sexually explicit material. Note again that material not tagged as sexually explicit is not hindered in any way by this approach. Examination of the access records of our own HTTP servers indicates that all requests from America Online and similar services come from the same IP address. This indicates that services such as America Online are already using some form of proxy server to connect their users to the Internet. *Cf.* Bradner Declaration, ¶ 79 (no currently available Internet technology is "configurable to block material with such tags").

101. A variant of the proxy server concept is the notion of an e-mail server. User software for processing e-mail rarely engages directly in the sending and receiving of e-mail. The reason is that users and their machines are frequently unavailable when it is time to receive mail or the Internet resources to send the mail may not be available at a particular time. Client e-mail software will typically contact an e-mail server to receive saved mail and to send new mail.

102. Such server software knows the account of the user that it is receiving mail for. The software therefore could differentiate between minors and adults. I do not know of any mail server that currently does this, but I do not believe that such code is complicated to write. If the e-mail server knows that

the user is a minor it could reject and return any e-mail message that contains "-L18" in the sender or subject line information.

G. *Client-Side Filtering Software*

103. Another possible means of limited access is client software which has been configured for minors. Such software would refuse to request or display any information marked with a string such as "-L18" in the name, source or subject line of the material. By refusing to request such materials minors are protected from those materials ever reaching the home computer. Such materials would never even appear in the home computer's browser cache.

104. *Availability of such clients.* There are relatively few vendors of Internet client software as compared with the number of proxies or the number of users. In fact, Netscape alone claims 80% of the WWW browser market. As has been discussed earlier, there are market forces to encourage client software vendors to produce "kid safe" versions of their software. If Netscape alone would do this (and if their marketing information is true), 80% of all WWW clients would be safe. If even the top five vendors joined up, the coverage would be quite thorough.

105. *Implementation of such filters.* The code required to check a URL for the string "-L18" would take less than 1000 lines or about one week's work per browser implementation. Many mail clients such as Eudora, mh, ProcMail, Information Lens and GroupWise already allow users themselves to create such filters. The only additional work in such systems is to hard code the filter so that enterprising minors cannot undo it. In our lab we were able to configure

Eudora in about 10 minutes to screen "-L18" messages. It took a similar amount of time for us configure the Netscape client to screen material tagged by our server with the string "-L18". The programming for such client side screening is very simple.

106. *Public access information providers such as libraries.* Some institutions, such as libraries, may want to provide Internet access to the public at large. Such institutions must deal with patrons of all ages. There are two approaches to this problem. The first is to segregate the "adult only" access terminals from the general terminals. Workstations in the adult only area would be configured with non-screening client software while the generally open workstations were configured with the "minor access" blocking software.

107. An alternative is for the library's client software to verify the age of the person using the workstation. Almost every library requires a patron to have a library card with a number on it. It is the basic mechanism used to check out books. Every free library that I have had contact with differentiates between minor and adults. When a minor wants a library card, an adult must sign for them and accept responsibility for lost or damaged materials. The library even tracks this additional information. Before a library takes on the task of providing Internet access to patrons they will first have gone to a computerized patron information system for checking out books. Requiring a patron to enter their library card number before accessing adult tagged Internet materials is an easy way to screen for minors.

108. *Summary of tag blocking.* It has been shown that technology already exists for Internet content providers to register adult users and block access to

adult material when requested by non-registered users. It has been shown that providers can already get registration services on the Internet and be paid for referring customers to the registration service. It has also been shown that content providers can do such verification without managing a database of users. It has also been shown that such providers can post their materials on such sites which will perform such adult verification for them. All of this technology is available, off the shelf, today.

109. The notion of trusted proxy servers has been presented. A proxy server can represent a large body of users and can certify that any requests by minors for materials tagged with sexual explicitness identifiers will have already been blocked. Content providers can treat such trusted proxies as adults. The technology for this approach is available today. Cooperation from Internet providers that know who their users are, would have to be negotiated before this approach becomes widely available.

110. It has been shown how client software is easily modified to block sexually explicit material. My experiments have shown that this approach requires minimal modification to available client software. Such software would, however, need to be modified before this approach can be deployed.

111. Lastly, although the L18 scheme has been presented as a simple solution, the "self rating" portion of the PICS content rating proposal could also be used in a similar way for similar purposes. There is some difficulty with PICS, however, with blocking particular email or USENET news messages.

III. THE UTILITY OF BLOCKING WHEN RELYING SOLELY ON THE USE OF THIRD PARTY SCREENING DEVICES

112. The next issue I will discuss is whether parental supervision, augmented by third party blocking software and/or rating or screening services, will in fact restrict minors' access to sexually explicit materials.

A. *Site Screening Ineffectiveness*

113. Sole reliance on such third party ratings is futile in achieving the goal of protecting minors from sexually explicit materials. Unlike movies and video games, where at most a few hundred come on the market in any given year, Internet sites proliferate at a much greater pace. It is feasible for a small group to experience and rate all of the movies and all of the video games that enter through normal retail market channels in a year. Even television, which produces much more material than either of these two media, produces only a limited amount of material per week.

114. As Mr. Bradner has testified, the number of sites on the Internet is doubling every 9 months. *See* Hearing Tr. 22:3, 22:13 (Mar. 21, 1996). This means that a screening service such as Surfwatch must look at as many new sites in a 9 month period as have ever existed before in the history of the Internet. This is a formidable task. Even this task assumes that the sites which were previously inoffensive will not start posting patently offensive material after they have been examined by the screening agency. The PICS proposal for third party "label bureaus" is based on tagging individual documents via URLs. This means

that a label bureau would need to tag and log every document on the Internet. The impossibility of this task has led to modifying PICS so whole sites or directions can be tagged at once.

115. Third party screening agencies impose additional costs on Internet users. If a parent wants to connect their home computer to the Internet they can obtain a connection for roughly $20 per month. If in addition, they want SurfWatch to keep sexually explicit material out of their home, it will cost an additional $5.95 per month. This means that 22% of their Internet connection costs are for children's protection. This approach shifts the costs of protecting children from sexually explicit online content from the speakers to parents or guardians. This means that parents and guardians must bear some of the costs for speech that they didn't want in the first place, or forfeit their children's safe access to the Internet.

B. *Screening Technology*

116. Current screening technology takes two forms. The first is IP address blocking in which the addresses of certain sites are saved and all transactions with those sites are automatically refused. The second approach is screening for particular words. Current blocking services use one or both of these approaches. A third approach, which is proposed in PICS, is that individual URLs would be verified with the provider or a label bureau to determine their appropriateness.

117. *IP address blocking problems*. IP address blocking requires that the user's computer have stored on its hard disk a list of all IP addresses which should be

blocked. When one subscribes to a screening service for $5.95 per month one is receiving every month an updated list of sites to block. If the number of blocked sites grows at a similar rate as the Internet, the space required of each user to save the sites will quickly become problematic. This means that user computers must allocate an increasing amount of space for "child protection" information.

118. Even if the screening service can keep up with the content, the requirement that every user receive and store all of the blocked sites becomes prohibitive. The net effect of this approach is that the existence of a sexually explicit item on the Internet requires that every parent allocate computing storage resources to the task of blocking that item. Instead of providers assuming the one time cost of identifying their sexually explicit materials, that cost is multiplied by every home computer in the U.S. that is connected to the Internet. Even if a sexually explicit site were to register with such a screening service, there would in all likelihood a one month delay before screening takes effect.

119. *Additional screening problems for sexually explicit materials.* The second screening technology is to detect the presence of sexually explicit materials as they are received in the home computer and then refusing to present those items. Such a task for movies and images is impossible in current technology. There is no technology in the foreseeable future which would be capable of identifying a sexually explicit image. Such a task for audio items is very difficult and not completely effective. For these types of information no automatic content screening is possible at this time. It is possible, however, to search textual materials for particular words or

strings of words. Of course, to the extent that descriptions of explicit sexual or excretory activities or organs are described without the use of particular "search terms" used in particular third party screening software, such screening efforts as are made will be ineffective.

120. Even if screening for particular words were effective in detecting sexually explicit materials, it is frequently not done on every piece of information received. Experiments with SurfWatch show that such screens only detect particular known words in the URL, not in the body of an HTML document. If the URL does not contain these words, then the material is passed on to the child regardless of what may appear in the body of the text.

C. *Problems with Label Bureaus*

121. The proposed PICS system has two primary implementation approaches. The first for the content server to provide the ratings when the client requests the information. This is consistent with the provider tagging schemes advocated earlier in this declaration. The second approach is for client software to contact a "label bureau" with a URL before actually requesting the URL from the content provider.

122. The first problem with this approach is that every URL now involves two Internet requests rather than one. The first is to the label bureau and the second to get the actual content. There are already complaints about the slowness of the Internet interfering with the "flow" of its use. In many cases the speed problem is not in the size of the message (bandwidth) but rather in the total time for a message

to make a round trip from the client to the server and back again (latency). This requirement of access to the label bureau on every URL would double this latency in many cases. The PICS documents already point out that such label bureaus could become a serious bottleneck. *See* http://www.w3.org/pub/WWW/PICS/labels-960323.html (Appendix A). Note this third party scheme imposes costs, not just on sexually explicit materials, but on all URL communications.

123. The second problem has to do with the huge amount of Internet material. For a label bureau to meet its advertised level of effectiveness it must have a table entry for every unique URL on the Internet. This is already a huge amount of material and growing exponentially. The PICS standard does, however, have some mechanism for clumping large amounts of material together under a single rating which will have the net result of reducing most label bureaus to simple site screening.

124. The third problem with label bureaus is that they cannot label ephemeral materials such as e-mail messages broadcast to mailing lists or message posted to news groups. Such materials have a very short life time and are generated and die with a rapidity that is impossible to track in a database of URLs. If a person generating a sexually explicit message is not obligated to label it as so, such label bureaus have no alternative to offer.

125. The fourth problem with label bureaus which are unassisted by content providers is the assumption to be made when a bureau has no rating for a particular URL. Given the size of the problem of tracking URLs and even sites, we must assume that a particular label bureau will have rated only a small fraction

of the material on the Internet. If we assume that unknown URLs are decent and we also assume that there is no legal obligation for providers of sexually explicit material to make sure that they have been rated, then there is in essence no protection for minors. The unrated material is thus unscreened by anyone.

126. If we assume that any unknown URL is sexually explicit, then minors are shut out from most of the Internet. This assumption is equivalent to a site inclusion list as defined in the parties' Joint Stipulation, at ¶ 53.

D. *Summary of Third Party Screening*

127. In summary, identifying sexually explicit material is a human judgment that is not fully automatable using any known technology. The process of evaluating sites and producing lists of inappropriate sites is a huge task that is already ineffective in its current efforts and will become increasingly more difficult as the Internet grows. The only economically viable mechanism for evaluating Internet content is for content providers to assume the responsibility. Technologically, if the number of inappropriate sites continues to escalate the burden on users to store lists of blocked sites can become large. There is no known mechanism for automatically screening Internet content. Any existing screening technology is too slow for existing home computers. The only effective means for classifying Internet content is if the creators assume responsibility for that classification, either by doing it themselves or by affirmatively taking steps to request that third parties classify the

material. This is only solution which can grow at the same rate as Internet content is growing.

IV. YOU CAN BE SURPRISED ON THE INTERNET

128. Most current users who access the Internet are using a WWW browser. Requesting information consists of clicking on hyperlinks or typing in search strings. If the description of a hyperlink is not informative, a user may get what he or she did not expect. If the identification is not clear then the user can encounter items that they do not want to. *Cf.* Declaration of Donna L. Hoffman, ¶ 66.

129. Searches are not precise in what they retrieve. It is very difficult to use the Internet without a search engine. It is therefore very easy to get materials that one does not expect. This problem is exacerbated by content providers manipulating search engines to highlight their sites.

130. Even if information serving applications require a user to take specific action to retrieve materials, e-mail and newsgroups do not. Almost anyone on the Internet can send an e-mail to almost anyone else. The receiver does not control what appears in their in-box.

V. SUMMARY

131. *Standards and government.* The heart of the Internet is standards for communication. The setting of such standards for a variety of purposes is integral to the concept of the Internet. The Internet is not technological anarchy. Some of its content may have been anarchic before CDA but the technology is not.

The government is also not a new player in the Internet.

132. *Technically infeasible to screen without author assistance.* Because of the growth of the Internet it is, as a practical matter, impossible to screen all of the sites that might produce sexually explicit material. There is simply too much material generated in a given day for some organization to screen for sexual explicitness. It is also impossible to automatically screen visual material for sexual explicitness—this requires human judgment. Any automatic screen of textual materials must be trivial if applied at the client's site with any degree of efficiency.

133. If creators of sexually explicit content are required to tag their materials as such, then they bear the minimal cost of such screening. If such content creators do not tag their materials, then parents and other end-users must bear the costs of filtering what they do not want. That is, end users would be required to bear such costs in terms of computing resources and/or fees paid to ratings services.

134. *Tagging is technically possible without change to the Internet.* Everything on the Internet has a name. Simple tags can be placed in those names which provide an almost limitless number of ways to classify sexually explicit material. The necessary tagging requires no new technology and can be implemented today. The only thing that is required is agreement on a string (such as "-L18") which can be used as the tag. Only the material which is sexually explicit under the law needs to be tagged. All other Internet communication is not affected in any way.

135. *Blocking is possible without change to the Internet.* There are a range of ways in which content

providers can keep their sexually explicit materials away from minors. The first is to verify, via credit card or other verification schemes that requesters are adults. It has been shown that this need only be a one time charge, and, from then on, adult users can be verified without maintaining a database of users. It has also been shown that third party adult verification services already exist in the marketplace. In addition, those wishing to publish adult-only material can have those who manage their web site take care of the adult verification inquiry without any effort on the part of the "publisher."

136. It was also shown how service providers could offer trusted proxy servers which would promise to forward only requests for adult materials if the user was known to be an adult. The providers of such services would already know who their users are because that is how they bill for their services.

137. Lastly it was shown that client software can be easily modified to screen out material clearly labeled as sexually explicit.

138. A most important final point is that the Internet and the community that surrounds it have tackled far more difficult problems than keeping sexually explicit materials from minors. The whole area of Internet commerce and the protection of electronic "money" is a far more difficult challenge. Thus, there is no reason to assume that the Internet community cannot incorporate technological methods of the type described in this declaration. Moreover, the implementation of such methods by the Internet community would, in my view, neither damage nor affect in any adverse way this national resource.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of April, 1996.

/s/ DAN R. OLSEN, JR.
DAN R. OLSEN, JR.

SCHMIDT EXHIBIT 6

Adult Check http://www.adultcheck.com/

Adult Check ©

Adult Check© is the Internet's premier adult verification process. Adult Check was designed to help keep the Internet's Free Communication between Adults. Verified by top First Ammendmant [*sic*] Attorneys and created by Internet and Communication Specialists, Adult Check is the Internet's response to Government Censorship. Sites using Adult Check are able to restrict minors from entering. It is very easy to use for Net users, simply fill out the *form*, including your Credit Card Information, we charge a nominal $9.95 annual fee, and we will give you an Adult Check ID which you can use at all participating sites. This means that anytime you want to enter a site utilizing Adult Check, you simply enter your Adult Check ID# and it will let you enter, for FREE! All information you give us is held strictly confidential and is not distributed. With an Adult Check ID, you can once again cruise the Net and communicate the way **you** choose.

Apply Information E-Mail

Facts:

- **Adult Check is running on a Netscape Secure Commerce Server.**
- **All information given to us is encrypted and NOT redistributed!**
- **Your privacy is of upmost importance to us!**
- **Once you fill out the form below, you will be given your Adult Check ID.**
- **You may use your Adult Check ID to enter all participating sites, for FREE!**
- **The membership fee is $9.95 per year.**
- **The list of participating sites is growing rapidly!**

*****Apply Here*****

If you have a browser that supports secure communications, click **here**.

If you have a browser that does NOT support secure communications, click **here**

If you own an Adult Site and would like information on Participation click **here**.

Links Information E-Mail

[Links].....[Information].....[E-mail]

More Information: http://www.adultcheck.com
/info.htm1

More Information

Adult Check is a verification system that assigns Adults an Identification Number, which allows you to enter many adult Web Sites and See what only Adults are allowed to see. Under the current law it is a Federal Crime to transmit "obscene" material over the Internet unless you take steps to prevent minors from entering. A verified credit card is proof enough that an individual is an Adult and can have access to "Adult Material".

Whenever you go to an Adult Site that utilizes Adult Check, you enter your Adult Check ID and it will verify it within our database. If it is a current ID number it will automatically put you into the site, if not it will give you a denial page. This whole process is performed on a secure server, so your information is safe!

In order to obtain an Adult Check ID, fill out the form on the **Home Page**, which is also a secure page using Netscape Secure Commerce Software, and we will process your information and give you your ID#. Be sure to enter your full e-mail adress, so we may be able to communicate with you. We will bill your credit card $9.95 for the ID number, and that is good for 1 year.

We are currently expanding the number of Adult Sites using our system, it is growing rapidly, so get one now to be able to see the sights YOU want to see! This is the Internet's response to Govern-

ment Censorship! Thanks for your participation and be sure to tell others about our service.

If you own an Adult Site and would like information on Participation click **here.**

Apply Links E-mail

[Apply]....[Links].....[Information].....[E-mail]

* * * * *

Merchant Information http://www.adultcheck.com
/merchant.htm1

Adult Site Owners!

Adult Site Owners,

Adult Check© is a verification system that allows you to screen out minors from entering your site, and a great way for you to earn some money off of the volume of your site. Protect your Site, your Self, and make money using Adult Check.

If you are in violation of the Communication Decency Act (CDA), which states that it is a Federal Crime to transmit 'obscene' material over the Internet, without taking appropriate steps to prevent minors from accessing it, you may face fines of up to $250,000 and/or 2 years in prison. We feel this is a direct violation of our Free Speech; however we have found a way to continue free speech over the Net.

Adult Check was designed by First Ammendmant [*sic*] Attorneys, and Computer/Internet Experts. Under the current law, a 'verified credit card' is proof enough that one is an Adult and protects you from the law. Adult Check verifies the credit cards of its members and issues them an ID#

which they may use to enter your site and view 'Adult Material'.

When a person applies for an account with us, they are asked which site referred them. For each customer your site refers us, we pay you $3.00. At the end of every month we tally up how many customers each site has sent us and we send a check out. If your site refers us 1000 clients in one month, we send you a check for $3000.00. This is a great way for you to generate income off of your site as well as protecting yourself from the law.

Installing the Adult Check System is extremely easy, all you have to do is **E-mail** (or fill out the form below) us the address (full URL) of the page where you want people to enter their Adult Check ID's, and the URL of the page you want people to get when they enter a valid ID#. So in other words the URL of the warning page, and the URL of the content page. Also be sure to include the name of your site, so we may put you on our **link page**, and the name we should make the check out to, along with your full mailing address.

What benefit does this give you?

- ☐ If you have 'obscene' material on your page, it will protect you from the law.
- ☐ If you have censored your material, you probably have seen a drop in traffic-now you can uncensor the pictures and see your traffic rise again.
- ☐ You may use this to protect your whole site or just a section of your site.

- ☐ You are preventing minors from entering your pages, which may let you sleep better at night.
- ☐ You will be placed on our very popular **Links Page**, which will increase your traffic.
- ☐ We will also send you an Adult Check ID, for free.
- ☐ Generate substantial income off of your site.
  In order to start the process of utilizing our system on your Site, simply fill out the form below.

Once we recieve this, we will update our database with your info and send you a very simple HTML code to include on your Warning Page. It is about 4 lines and very simple to install. There is no CGI or any other programming besides the HTML code to include. We take care of the rest.

Once anyone hits your site they are prompted to enter their Adult Check ID. Once they do, our CGI Script and Database will be accessed and the ID number will be verified, if it is correct, it will return your Content Page and they are in. If the ID number is invalid it will give them a Denial Page and a way to apply for an account.

The **application form** is running on a Netscape secured server, and all transactions are secure. We have an extremely quick database, server, and multiple T-1 connections to the Net. This makes the process very quick and easy. Thanks for your interest and we look forward to having you utilize our Sytem.

* * * * *

SCHMIDT EXHIBIT 8

INFORMATION FOR WEBMASTERS AND VALIDATE
http://www.donsworld.com/webmas.html

Validate

WHY SHOULD YOUR SITE BE PART OF THE VALIDATE NETWORK

1) The response from those signing up has been better than we could ever have imagined. People love the idea of not being stuck paying for one site and taking the chance of not being happy with that site.

2) Many of the other similar services will sell your guest lists for profit. Validate WILL NOT sell any list to anyone.

3) Validate handles all transactions leaving you free to take care of your site. They will supply you with accounting info every 30 days or less so that you can keep track of how your site is doing. For payments made to them from First Virtual accounts you will be paid after approx. 90 days, and on payments made to them by check or money order you will be paid once a month or sooner.

4) You will have access to the Web-Masters Lounge. This is a restricted access only area with chat messaging for web-masters of Validate only. Here you can share ideas, help each other, make new friends, get and share files that you can use for your site, or just hang out and chat with other Web-Masters like yourself.

5) ITS FREE . . . . . Site Owners can setup their Adult Site FREE and its easy to do. Also many of you do not have access to cgi, with Validate that's not a problem. CGI access is not required with Validate. You will get $3.00 from every user that signs up with Validate at your site. Validate only keeps $2.00 and they do everything for you so you don't have to worry about it.

6) Since I signed up with Validate I've had a handful of site owners and users call me chicken. I feel that I would be more chicken if I were not able to put up with their childish remarks. I have to ask myself, What does it matter to them if I do this or not. At least I know that I've done something to help prevent kids from entering my adult site. No system is fool proof, but I doubt there is more than a handful of kids on the net that would actually hit there back button when faced with a simple "If your under 21 please hit your back button now". Are we as responsible Web-Masters really concerned or do we actually want our system to be easy for children to enter? Ask yourself that question! Since I started with Validate two of the Web-Masters that made rude remarks to me about doing this have since vanished from the net like so many of the other sites that vanish daily. Will yours be next also without any warning, and will you be just as smug right up till that moment when you find yourself suddenly without a home. Many Internet Providers are removing adult sites without warning, for not requiring any validation of age, can you assure yourself that yours will not do the same?

7) Many Web-Masters are so caught up with the new law, that they forget people were getting busted before the law was passed. The only thing the law did

was to make it easier. Even if you had a reason not to join Validate, You should do something, because any protection is better than NO protection. The worst protection, is better than no protection, because with no protection you take a chance with not just a few that MIGHT find there way into your site, but with the many that ARE getting into your site.

8) The hits to my page have actually gone up rather than down since adding Validate. And by being apart of Validate you will have many Validated customers coming to your site that otherwise may never have visited your site.

9) I can go on and on and on, as to why you should, but if your not ready to take some responsibility for your site than there is probably nothing else I can say to you.

Here are a few of the comments that I've gotten from my visitors

Thanks Don for using this type of validation. Your site is the first I've ever joined because I've always been afraid I wouldn't get my moneys worth. You can't go wrong with this and so I joined up right away.

$5.00 for a year, and I get access to any system using Validate? That's the best offer I've seen for an adult web site since I first got on the net over 3 years ago.

REGISTER YOUR ADULT SITE FREE

Click Here To Visit [box omitted] The Builder Of This Page

This Page is enhanced for [box omitted] NetScape Navigator

Validate Services http://www.zynet.com/-validate /webmas.html

Validate

WEBSITE SERVICES

Webmasters can feel safe knowing that their websites are not being accessed by minors! This is protection for you! We all need this type of protection!

When you register your website for this service you will be given a "frontpage" that asks for a user ID and password. When this information is entered and submitted by the user, it accesses our database for verification. Once verified, the user will be automatically "transported" to the webpage that you specify! If the user is not 18 years of age or older or has not been verified by our service they will not be able to access your site! There is no need for you to have access to cgi scripts since everything is taken care of for you!

There is NO FEE for this service. As a matter of fact, we pay you to help us implement this service! We will pay you $3 for each person you help us sign up! We will also pay you $1 each year they renew their membership! This could add up to a VERY substantial income for your EVERY YEAR!!!

* * * * *

Validate Services http://www.zynet.com/-validate /webmas.html

Validate

CONSUMER SERVICES

In order to gain access to many websites across the world you just need to verify your age with your credit card. There is a $5.00(US) per year administration fee for this service.

Fill out the online form with a User Name and Password of your choice. You may pay with your Visa or MASTERCARD. You also may choose to send check or money order along with a copy of your drivers license to:

Validate
10905 Towner, NE
Suite D.
Albuquerque, NW 87112

* * * * *

SCHMIDT EXHIBIT 9

FV: Account Applications http://wwa.fv.com/new acct

ACCOUNT APPLICATION

[Clickable Map] [Text Index] [Home Page]

First Virtual Account Application

- ☒ Buying and Selling Summary
- ☒ International Users Guide
- ☒ Terms & Conditions
- ☒ Application for browsers that do not support forms

To Become:

☐ **A Buyer:** you need a valid Visa or MasterCard. (The registration fee is only US$2!)

☐ **A Seller:** you need a bank account that accepts direct deposit via the US ACH system. (The registration fee is only US$10!)

(NOTE: Sellers on **The InfoHaus** need a Buyer's account *and* a Seller's account)

Application Form:

NOTE: This form does NOT ask for credit card or bank account numbers—with First Virtual, you **never** send such information over the Internet! After you fill out this form, you will receive an e-mail message with instructions on Activating Your Account and registering your financial information **entirely off the Internet.**

For Help click on any field name.

Full-Name:

Email-Address:

(check your e-mail address for accuracy! Further application instructions must be sent to you via e-mail.)

Notification-CC:

Phone-Number:

(Include country code. USA / Canada = 1. Example: +1 555 555 5555)

Street-Address:

Street-Address-2:

City:

State:

Postal-Code:

Country:

PIN-Choice:

(Your preliminary account ID choice—8 alpha-numeric characters, minimum)

Address-Redistribution:

(NOTE: Please skip the following choice unless you are completely knowledgeable about MIME and multi-part alternatives, and are positive that your mailer handles them correctly)

MIME-Capable:

FREE TRIAL OFFERS!

As a new First Virtual applicant, you are eligible to receive the following free promotion. Please check the appropriate box:

24 free issues of Newsbytes, the premier computer and telecommunications industry daily newswire service.

No promotions, thank you!

Activating Your Account

For Buying

After you fill out the application form, you will receive an e-mail message containing a 12-digit application number and instructions on how to call our automated, toll-free 800 number. You will then enter your credit card information and application number over the phone.

If you have trouble entering your information (for example, if your telephone cannot generate the proper tones), please send an e-mail message to humanhelp@fv.com (**DO NOT** include your credit care information in your e-mail message!). A First Virtual operator will contact you to get your credit card information by another means.

For Selling

After you fill out the application form, you will receive an e-mail message containing a 12-digit application number and instructions on how to send your bank account information to First Virtual via postal mail. Proceeds of your sales will be de-

posited into this account, automatically, via the US ACH direct-deposit system.

Return to form

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 96-963

AMERICAN CIVIL LIBERTIES UNION, ET AL.

v.

JANET RENO, ATTORNEY GENERAL OF
THE UNITED STATES

Civil Action No. 96-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.

v.

UNITED STATES DEP'T OF JUSTICE, ET AL.

DECLARATION OF ANN W. DUVALL

I, Ann W. Duvall, depose and state as follows:

* * * * *

41. Nearly every press report about parental control software has noted that, although the technology is extremely effective, no single software program that is currently available successfully blocks all access to inappropriate material by all children. To put this in context, however, the currently available software products are *far more effective* than the Communications Decency Act in protecting minors from inappropriate material: the Act would allow much more inappropriate material to reach children than parental control software does. First, at least 30% of the sites blocked by SurfWatch originate

outside the United States, and that percentage is likely to rise significantly if the Act is upheld and producers of sexual material simply move their operations overseas. These sites will be completely unaffected by the Act, but they are very effectively filtered by SurfWatch and other parental control software. Second, because the Act applies to potentially millions of individual speakers, most of whom will not be legally sophisticated and will not have the benefit of legal counsel, many inadvertent violations of the Act will likely occur. The Act, like any regulation, can do nothing to prevent either inadvertent violations or willful violations, because it merely punishes such violations after the material is posted. In contrast, SurfWatch and other parental control software effectively block inappropriate sexual material *before* minors are exposed to it.

* * * * *

DATED: March 19, 1996

March 21, 1996 Hearing

Testimony of Ann Duvall, Vol. I, 161:17 - 162:18

[161]

* * * * *

JUDGE DALZELL: Okay. I got you. And on page 20, paragraph 41, you make the statement that 30 percent of Surfwatch blocked sites, "originate outside the United States." How do you know that?

THE WITNESS: That's from our actual list of sites that we block, so that number may actually be higher than that. But of the known sites where we specifically have the name of the site, it's approximately 30 percent of those that come from outside—

[162]

JUDGE DALZELL: And how are you able to tell that they originate outside the United States?

THE WITNESS: Well, even though today, when I wasn't sure that I came from Paris, many sites actually do have an identifier on them that indicate what country they originated.

JUDGE DALZELL: Okay. So it's based on an actual canvas that you've done—

THE WITNESS: It's an—

JUDGE DALZELL: —of these sites.

THE WITNESS: It's an actual address. We can look at the address, and decide whether it comes from United Kingdom or Finland.

JUDGE DALZELL: Let's assume there's 5,000 blocked sites. You have actually counted, or your firm

has actually counted 1500—to wit, 30 percent as being from outside the United States. Is that correct?

THE WITNESS: That's correct.

JUDGE DALZELL: Okay.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 96-963

AMERICAN CIVIL LIBERTIES UNION, ET AL.

v.

JANET RENO, ATTORNEY GENERAL OF
THE UNITED STATES

Civil Action No. 96-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.

v.

UNITED STATES DEP'T OF JUSTICE, ET AL.

AFFIDAVIT

I, Donna L. Hoffman, of Nashville, Tennessee, declare:

* * * * *

107. The Internet is a truly international communications medium; many dozens of countries are represented by over 128 international hosts and international participation is increasing. Fifty-one country and global domains are experiencing annual growth rates in excess of 100%. The most rapidly growing country and global domains (among those above 10,000 hosts) are Singapore, .net, the Russian Federation, the US domain (.us), Brazil, Finland, Japan, Israel, Italy, Poland, Taiwan, the United Kingdom and Ireland (Rutkowski, Tony, 1996, "Strategic Note - Latest Internet Statistics," General Magic

Strategic Note, February 21. [www. genmagic. com/ internet/]).

108. In absolute terms, the fastest growing Internet domains (a six-month increase of at least 100,000 hosts) are .com, .net, .edu, UK, US, Canada, Japan, Germany, and Australia (Rutkowski, Tony, 1996, "Strategic Note - Latest Internet Statistics," General Magic Strategic Note, February 21. [www. genmagic.com/internet/]).

109. Since July 1995, 28 countries or territories have connected to the Internet for the first time, including Albania, the Bahamas, Bahrain, Cuba, Ethiopia, Guatemala, Jordan, New Caledonia, Sri Lanka, Tonga, and Uganda (Rutkowski, Tony, 1996, "Strategic Note - Latest Internet Statistics," General Magic Strategic Note, February 21. [www. genmagic.com/internet/]).

110. Internet host distribution by country reveals that the top ten hosts (in July 1995) were the United States with over 64%, followed by Germany with 5%, the United Kingdom and Canada with 4%, Australia with 3%, and Japan, the Netherlands, France, Finland, and Sweden each with 2% (Quarterman, John, 1995, Matrix Maps Quarterly, Vol 2 (4), 42-43, Matrix Information and Directory Services, Inc. (MIDS), Austin.). Current estimates put the US/non-US host distribution at closer to 60%/40%, with roughly the same distribution across the top ten countries (Rutkowski, Tony, 1996, "Strategic Note - Latest Internet Statistics," General Magic Strategic Note, February 21. [www.genmagic.com/internet/]).

111. In January 1995, the number of United States networks connected to the Internet (a network is a

communications medium which transports the information - packets - to host computers connected to the Internet) was 26,681 and the number of International networks connected was 19,637 (Internet Society, 1995, [ftp://ftp.isoc.org/isoc/charts/]). This number, now impossible to know, was forecasted to grow to roughly 100,000 networks connected to the Internet in 1996, with approximately half connected in the United States and half connected internationally (Rutkowski, Tony, 1996, "Strategic Note - Latest Internet Statistics," General Magic Strategic Note, February 21. [www.genmagic.com/internet/]).

112. These statistics reveal that the Internet is a vast global medium enjoying explosive rates of growth worldwide.

113. It is just as easy to access a foreign Web site as an American one and no more expensive.

114. There are images of sex, ranging from mild to less mild on foreign sites as well as American sites.

115. Anonymous remailers and pseudonymity servers (computer services that privatize your identity in cyberspace) can be used by Americans or others to post material through an overseas site without disclosing their identity.

116. There is an important distinction between anonymous remailers and pseudonymity servers. When an individual sends a message through an anonymous remailer, no record is kept of the source of the message. Thus, anonymous remailers provide true anonymity. On the other hand, when an individual posts a message through a pseudonymity server, the same pseudonym will always be attached. This allows individuals using such a service to

establish a persistent presence in cyberspace and it allows them to send email, for example, via the pseudonymity server without the receiver knowing the individual's identity.

117. It is also possible for a person, American or otherwise, to set up an pseudonymous account with almost any Internet Service Provider in the world. This means that an individual could establish a set of Web pages from anywhere in the world without revealing his or her identity.

118. Therefore, the Act will not be successful in preventing minors from accessing sexual material via the Internet.

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March 22, 1996, Hearing Testimony

Donna Hoffman, Vol. II, 68:5 - 69:11, 69:22-24

[68]

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THE WITNESS: * * * If we look at a host distribution by country, though, that was in—the latest measurements for that were taken in July of 1995. So, we don't have the figures for Mr. Lottor's most recent calculations, because they haven't been done yet; however, those distributions show that 60 percent of hosts were thought to originate from the United States and 40 percent of those hosts, and in July, '95 the hosts were running a little over six and a half million, now it's almost ten million, so it was about 60-40 U.S., non-U.S., and the distribution—I don't remember exactly, it was United States followed by—

JUDGE DALZELL: And the source you're citing is what?

JUDGE SLOVITER: Lottor.

JUDGE DALZELL: Lottor?

THE WITNESS: Lottor, L-o-t-t-o-r, Mark Lottor, he runs a company called Network Wizards and as a service to the Internet community he runs a program which counts the number of hosts on the computer every six months. I don't—I cannot find my . . . oh, here it is, I found it. My listing is United States had a little over 60 percent, followed by Germany, United Kingdom, Canada, Australia, Japan, the [69] Netherlands, France, Finland and Sweden,

and those are the top ten. Now, the distribution now is thought to be 60-40, even though we don't know yet, but we believe it's moving towards 60-40 and it was at 64-36. So, it's clearly moving toward parody and that seems—is also borne out by counting the number of networks connected to the Internet, which is now moving toward a parody distribution of about 50-50, meaning about 50 percent of networks connected to the net are in the U.S. and about 50 percent of networks connected to the Internet are non-U.S.

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Q Is it fair to say that it takes just as many clicks to go a site in London as it does to go to a site in Philadelphia?

A Yes, or just as few, as the case may be.

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Hearing Testimony, April 12, 1996

Schmidt, Vol. IV, 71:23 - 74:7; 78:10-23; 115:2-22; 131:11-24; 138:23 - 139:21.

[71]

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Q In fact, your knowledge of these mechanisms, these adult identification or screening mechanisms is limited to what you've read on Webpages, isn't it?

[72]

A That is correct, yes.

Q In fact you don't know if so-called adult verification, that's a term that's reflected in some of your exhibits, is different from a system of user ID password or the so-called First Virtual system; you don't know if they're all different or if they're in fact the same thing, do you?

A That's correct, I do not know that.

Q And you have no knowledge of what software is involved with any of these systems, adult verification or First Virtual, correct?

A That's correct, yes.

Q And as to credit card verification, your knowledge of how that works is limited to what you've picked up perusing Web sites, isn't that right?

A That plus experience in previous investigations in bulletin board systems and people requiring credit card access for those.

Q You have no knowledge of the cost that would be involved in instituting a credit card verification system, do you?

A No, I don't.

Q You don't know whether it's possible, whether it's even possible to institute such a system if there's no financial transaction taking place, do you?

A No, I do not.

Q And you don't really know what the First Virtual is, do you?

[73]

A Other than what I've read, no.

Q And what you've read has been limited to the Web site screens that you showed us in your exhibits?

A That's correct, yes.

Q The most in fact that you can say about First Virtual is that you think it appears to be a service that's a sort of verification of authenticity, is that right?

A That's based on reading what's on the screen, yes.

Q And you've never talked with any person involved with any of the adult sites that you've visited that uses an adult verification system to find out how they manage that system, have you?

A No, I did not.

Q And you have no knowledge of whether any adult verification system that you've mentioned in your declaration is usable outside the context of Web sites

or bulletin boards, for example, whether it would be usable for news groups, do you?

A That's correct.

Q You don't know whether any of these adult verification systems would be usable for list exploders, do you?

A No, I do not.

Q Mail exploders, excuse me, or list serves, and you don't know whether any adult verification system would be usable or [74] feasible for on-line chat rooms, do you?

A That's correct, I do not.

Q And you have no idea whether any of these adult verification systems would be feasible for nonprofit organizations that run largely or totally on volunteer labor, do you?

A No, I do not.

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[78]

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Q Turning to your declaration, Mr. Schmidt, you indicated and you indicated in your answers to Ms. Heins' questions that you have had conversations with parents in which they have expressed some concern about their children's access to sexually explicit materials on line, is that correct?

A That is correct, yes.

Q And in your experience parents concern in this record has no relevance to the origin of the material,

that is whether it comes from abroad or whether it is of domestic origin, is that correct?

A That is also correct, yes.

Q All they care about is what it—what the content actually is, not its geographic origin, is that accurate?

A That is accurate, yes.

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[115]

Q I believe Ms. Heins also asked you some questions in connection with the adult verification exhibits that you provided for the Court. Did you produce those exhibits to provide the Court in examples of some of those mechanisms that are now appearing on the Internet?

MS. HEINS: Well, I'll just object to the leading quality or the—

JUDGE DALZELL: I think he's trying to save time.

JUDGE SLOVITER: Oh, I think, yeah.

JUDGE DALZELL: He's just trying to save time.

BY MR. COPPOLINO:

Q Do you recall the question?

JUDGE SLOVITER: Go ahead and answer.

THE WITNESS: And, yes, that's why I produced them, to give the Court the sense of what was out there that people are putting on the sites now.

BY MR. COPPOLINO:

Q Does your declaration purport to indicate that you are an expert in the precise details about how each one of these examples works?

A No it does not.

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[131]

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Q Mr. Schmidt, Mr. Coppolino asked you a question about your understanding or about what is going on in terms of foreign countries treatment of sexually explicit materials on line. Isn't it true that there are countries which are far more lenient in their treatment of sexually explicit material, that is, whether it is deemed illegal or not illegal?

A That is correct, yes.

Q And in fact, when parents come up to talk to you about sexually explicit material on line, you've advised them that in fact, there are sexually explicit materials that might be deemed illegal in this country which are perfectly legal in other countries, isn't that correct?

A That is correct, yes.

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[138]

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JUDGE DALZELL: Okay. Now, same question is, you're the publisher of Vanity Fair and you have all of your issues on line. And the publisher comes to

you and says Mr. [139] Schmidt, I've got a problem. We had this very famous, controversial cover of the actress Demi Moore when she was pregnant and she was naked on the cover. What do I do—and it's all on line—what do I do now to prevent you from coming after me under the Communications Decency Act of 1996? What do you tell them?

THE WITNESS: Once again, in that context, it's a visual image for fun, basically. Not an educational—it could be educational, but for fun more than anything else. And I would tell them as well, depending upon the community in which that image could be viewed, that standard would probably apply towards the—pursuant of the—the rules of this law.

JUDGE DALZELL: So, it would be different in Brainard, Minnesota, perhaps, than New York City?

THE WITNESS: That's quite possible, yes, your Honor.

JUDGE DALZELL: And you'd tell them that?

THE WITNESS: And I would tell them that, yes, your Honor.

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Hearing Testimony, April 12 and April 15, 1996

Olsen, Vol. IV, 197:5-201:2; 219:23-221:18; 226:15-18; 235:8-236:24; 250:3-251:25; 253:3-256:6.

Olsen, Vol. V, 44:6-45:8; 45:18-46:15.

[197]

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MR. ENNIS: The third area in which we contest Dr. Olsen's expertise is with respect to either direct or third party verification of credit cards, including the technology of verification, the costs of verification and the types of transactions that would be verified.

BY MR. ENNIS:

Q Again, Dr. Olsen, with respect to that subject matter, is it fair to say that you have just simply read the Web pages of MasterCard and Visa since being retained in this litigation?

A I would have no technical knowledge of what MasterCard and Visa do.

Q Is it fair that you've just read their Web pages?

A That is correct.

Q And since being retained—

A That is correct.

Q —you've had no discussions with personnel at MasterCard or Visa?

A I have not.

Q And I believe you just said you have no expertise in the technology of credit card verification.

[198]

A The technology of what MasterCard and Visa themselves do, I have looked some at verification.

Q You have no idea what they would charge to verify for commercial transactions?

A I cannot say what they would charge.

Q And I take it you don't even know whether they would verify for a noncommercial transaction, that is, for a speaker who wanted to provide his speech for free?

A I would have no useful knowledge.

Q Now, with respect to third party verification systems, is it also fair to say that you have only looked at the Web pages of those third party verification systems since being retained in this litigation?

A Clarify what you mean by a third party verification system.

Q Other systems that will themselves go to Mastercard or Visa and obtain verification of credit card information, adult ID check systems—

A Oh, adult ID as to what they—I have read their Web pages and I have studied some of their technical documents.

Q And that's again since being retained in this litigation?

A That is correct.

Q Have you interviewed anyone at those third party verification systems?

A No.

[199]

Q Have you interviewed any speakers who have used those third party verification systems?

A I have not.

Q Have you ever used those systems yourself?

A I have not.

Q Do you have any idea how many people are registered with those systems?

A I do not.

Q Could be one, could be 1,000, could be 500, you have no idea?

A I have no idea.

Q Is it fair to say that you don't know how the "referral technology" between a third party verification system and a speaker would work, and you're foggy about how the third party obtains verification; is that fair?

A No. Referral technology, please clarify that.

Q Well, would you look, please, at pages 247 to 249 of your deposition transcript which we took last Tuesday. I'm using the phrase you used there. Have you located those pages?

A 247?

Q Right. And you were asked the question, "Okay, what happens when John comes to my site?

"Answer: Okay. My understanding is that somehow, and I would have to check the details, is that initially he [200] not having a password would be referred to adult check for which he would pay whatever it was and then be referred back. How that referral

technology works, I can't say right now. I'd have to look at the detail."

And then you say further down, "Question: Okay. Now, how does that work?

"Answer: As I remember the technology there, IC Verify provides—I believe it is a PC-based system, but they may have mentioned Unix (ph), I'm foggy there, whereby a phone line is connected to your machine or multiple phone lines, and then software makes the request. A call gets made to MasterCard, whoever they're connected to or the bank, however they do that, and a charge gets processed."

Do you recall that question and that answer?

A Yes, I do.

Q Does that—since you used the phrase "referral technology," what does it mean in that context?

A Referral—excuse me. Referral technology as I mentioned it there on page 248 has to do with when someone arrives at a site that would like to be verified, say by Adult Check or Validate, they are transferred back to the Adult Check site. They do that by means of code. They have the original people who want to be blocked, they have to put that code into their HTML pages. Now, the details of exactly what the syntax is without again looking at the spec I could [201] not quote to you, but the substantive nature of exactly how that mechanism works, I do understand that clearly.

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[219]

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Q Okay. Now, do you agree that there is nothing in current technology that would enable a speaker to go to a news group, a chat room, a list serve, and get back an adult access code [220] for everyone who was listening?

A I do not know of any such technology.

Q So again there's no way a speaker today could get assurance through technology that only adults were in the news group, chat room or list serve to which that adult wished to speak?

A If you want a positive verification, I know of no way. It would only have to be statistical as I mentioned before.

Q All right. Now, in addition to the adult ID system, which there's none in place today, another possible way for the speaker to verify age is through the proxy of a credit card, correct?

A Yes. I would be reluctant to say there is no other possible way. That is the only other one I know of.

Q Now, you've already testified that you don't personally know what it would cost you as a speaker to verify credit cards, and you haven't checked that cost with credit card companies.

A I have not.

Q And suppose you wanted to make your speech available for free. Do you know whether credit card companies would verify those noncommercial transactions at all?

A I have no knowledge. I would suspect they would not.

Q Let's turn to speaker verification of age through third party systems. This time the speaker is not doing it [221] directly. Your declaration suggests that there are springing up some third party systems that might do age verification—

A Such as Adult Check or Validate.

Q Adult Check or Validate. And again, what you know about those is what you learned from their Web pages recently?

A Yes. I read their technical specs.

Q I assume there's no—you're not aware of any adult ID list or adult access code that's available to those third party verification systems that's not directly available to you as the speaker; correct?

A From my reading of it what they're doing is they're building their own databases.

Q Based largely on the use of credit cards?

A Yes.

Q And again, since you didn't profess to know about this, you don't know what those third party verification systems would do with credit card information in order to verify it.

A No. I have no idea what they actually do with—

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[226]

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Q Ah. Well, speaking of laws, does your proposal make any assumptions about whether foreign speakers would responsibly label their speech -L18 or whatever convention is adopted?

A In doing my analysis of the problem I did not consider foreign speech because I was not aware that Congress could legislate foreign speech.

Q So with respect to any speech that for any reason is not labeled appropriately in the -L18 code or whatever other convention comes up, under your proposal that speech would reach the home?

A That is true.

Q All speech that's foreign posted where people don't care about United States laws, that would reach the United States also—

A Unless some other measure was taken, that is true.

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[235]

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Q Now, speaking not as a legal matter, I'm not asking for a legal conclusion under the Communications Decency Act, but if you were a speaker and you thought about posting a centerfold from Playboy Magazine, would you personally think that that image might be indecent or patently offensive for persons under 18?

A You're asking me for a conclusion about the decency of a particular piece of—

Q No, I'm asking for your personal opinion, would you personally think that that image might be indecent or patently offensive for persons under 18?

A So you're asking me for a conclusion as to patently offensive?

Q You personally.

MR. BARON: Objection. It's beyond the scope.

JUDGE SLOVITER: What? Excuse me?

MR. BARON: It's beyond the scope of his direct examination.

[236]

JUDGE SLOVITER: Okay. A lot of the witnesses have been so asked, you know, from both sides, but go ahead. It is beyond the—

JUDGE DALZELL: But so what?

MR. BARON: We're presenting Dr. Olsen as a technical expert.

JUDGE BUCKWALTER: We understand, but —

MR. BARON: Not as a speech witness.

JUDGE BUCKWALTER: We'll let him answer that question.

JUDGE SLOVITER: We're going to let him answer it.

THE WITNESS: Okay. If we consider the local community which consists of Dan, Dan would be offended.

BY MR. ENNIS:

Q And how about the seven dirty words?

A Dan would be offended.

JUDGE BUCKWALTER: Who's Dan?

JUDGE SLOVITER: Who's Dan?

THE WITNESS: That's me, I'm sorry. That's me. (Laughter.)

JUDGE DALZELL: Oh, he's the community. He is an expert on what would offend him.

THE WITNESS: That's a relatively small community, but it's the one I know best. (Laughter.)

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[250]

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Q You don't know whether the credit card companies will verify credit cards for me if I ask them to without attaching a commercial transaction to it, correct?

A I do not know—I guess the easiest way to say this is I do not know nor do I particularly believe that for free they would do the validation you want.

Q So if I want to comply relatively quickly with this statute, I'm probably going to have to—one of my options is I'm going to have to talk to the credit card companies and see if they'll let me pay them for each of my 50,000 visitors to verify the credit cards. And we don't even know whether they'll say yes or not, but at least that's one possible approach I have, correct?

A That is.

Q And I don't know whether today that approach is going to work or not, right?

A Well, wait a minute. I mean all—we would have to process some transaction.

Q Okay.

A Whether or not—I would be enormously surprised if MasterCard says no, we will not let you charge something on our service.

[251]

Q Now, the alternate approach that you propose is this adult ID system, correct?

A Mm-hmm.

Q And you propose in your declaration three or four companies that exist now that will do this, correct?

A Yes.

Q One example is Adult Check, correct?

A That is correct.

Q And I believe as you told Mr. Ennis, what you know about Adult Check is that you looked at their Web site.

A I looked at their Web site and I also studied their specification of how they claim that their stuff works.

Q Did you make any effort to determine whether the people behind Adult Check are reputable or not?

A No.

Q So you don't know if I go to Adult Check and put my credit card number in there, you don't know whether they sell it to other people or not?

A I have no idea what they do.

Q You don't know if they sell it to people who—let me ask this. Did you look at what sites currently use Adult Check?

A No.

Q Would it be fair to say that the sites that currently use services like Adult Check are essentially pornography sites [251] of the kind in the Coppolino book? (Laughter.)

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[253]

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A The answer, Mr. Hansen, is that when I believe either Adult Check or Validate had a long list advertising who it was that had already signed up with them and which providers were going through them, I did not look at that list at all, I didn't care. I was only interested in how does this technology work. So I really could not characterize what kind of sites they were, who they were, I have no idea. I only looked at the technology.

Q I want you to assume hypothetically that if we booted the computer back up right now and got the Adult Check Web site on the screen and looked at the list that every single Web site currently listed under Adult Check would be what you and I would fairly characterize as triple X or true pornography sites.

A That would not surprise me, but I have no knowledge.

Q Okay. So under your proposal if I'm this hypothetical Electronic Frontier Foundation or Critical Path AIDS Project, I have to send all of the 50,000 people who come to my site a day to those people and ask them to list themselves on that site, on Adult Check site, which we just established largely as a place where people list themselves who want to get access to pornography—

[254]

JUDGE SLOVITER: We haven't established, we've assumed.

THE WITNESS: No, we didn't—we did not establish.

JUDGE DALZELL: We'll assume.

THE WITNESS: Yes.

MR. HANSEN: You're correct, you're correct.

BY MR. HANSEN:

Q I have to send all of my potential readers off to this list that hypothetically includes only sites that are pornography sites, correct?

A I guess your question is would I have to send these people off to them, and the answer is—before I answer the question, I would like to complain slightly about the 6:15 characterization. The reason I complain about that is because what it does is it precludes a number of other actions you might take. If we postulated a one-month characterization, for example, then it is possible that the ACLU and the Electronic Frontier Foundation and any number of others could say we really don't want to be associated with Adult Check, and you could have established an equivalent

service of your own that would not have all these people on it and then you would not have to have guilt by association. When you characterize 6:15, obviously you could not take any of those measures because they will take time to accomplish, but they are possible.

[255]

Q Well, Dr. Olsen, my colleagues have helped me out while you were doing that answer, and they have showed me Exhibit 6 to Mr. Schmidt's declaration, which I'd like to show you.

(Off the record.)

BY MR. HANSEN:

Q Would you agree with me that most of those sites appear to be pornography sites?

A I don't know what's there, but I wouldn't go there.

JUDGE DALZELL: Well, chick of the day could be poultry.

JUDGE SLOVITER: Oh, you really are in for ducks and poultry. (Laughter.)

JUDGE DALZELL: It's a leitmotif.

BY MR. HANSEN:

Q Nor would you want to be associated with that list, would you?

A No, I wouldn't.

Q In addition to that, if I were to send all of my potential listeners to Adult Check, my listeners would have to pay money to Adult Check in order to get an adult ID from Adult Check, correct?

A That is my understanding.

Q And if I have to comply with this law quickly, that's my only option at this point, isn't it?

A If you were assuming compliance within 6:15, yes. If [256] you're assuming compliance within a month or two, you could with your community of friends create an equivalent site where you would not have to have bad neighbors.

Q And it might well cost me a significant amount of money to set up an equivalent site, mightn't it?

A I couldn't judge how much money it would cost you to do that.

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[44]

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Q Now, your 90 percent statistical significance figure assumes, does it not, that all of the speech has been properly tagged and labeled according to your proposal?

A Correct.

Q And that assumes that all of the speech that originates abroad by foreign speakers has been tagged and properly tagged?

A I think I have stated previously that we have not done anything relative to foreign speakers and we would have to rely upon Surfwatch or Netnanny technology for foreign speakers.

Q Well, then if we assume that some of the speakers are foreign speakers and they're not tagging at all would your 90 percent go down considerably?

A The 90 percent—I think you're fallacious here. The 90 percent is if I am a U. S. speaker how much can I depend will actually get through to minors, that doesn't say anything about how much minors—how much potential sexually-explicit material has come to a minor, that's a different question.

Q I understand that, I'm asking you a different question. [45] I'm asking you to assume all of the communication entities downline change their browsers, change their end-user software, change everything so that your L18 proposal could technologically be implemented, if no foreign speaker tags or labels their speech will that speech be kept away from 90 percent of minors in America?

A That speech, no, but I didn't remember that there's anything in the CDA that involved those speakers.

* * * * *

Q I assume it's of course possible that there are some speakers out there who will willfully violate the law and not tag or tag inappropriately, correct?

A That's a good presumption.

Q And I assume there are a larger number of speakers out there who will tag, but they will not exactly know what's patently offensive or not and will make the wrong judgment and say my speech is appropriate for minors when later it's [46] turned out some community thinks it's inappropriate, that's possible too?

A That's possible.

Q All of that speech, whether willful violations of the Act or inadvertent violations of the Act, that will reach minors in America, correct?

A So will slander and fraud, yes, it's the same thing.

Q But it would not, would it, if you were using the PICs technology set to the default to tag—to reject all un-tagged speech and to reject all tagged speech that has not been approved by a third-party rater, none of that would reach minors in America?

A That is correct.

Q Even foreign postings?

A That is correct.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 96-963

AMERICAN CIVIL LIBERTIES UNION, ET AL.

v.

JANET RENO, ATTORNEY GENERAL
OF THE UNITED STATES

Civil Action No. 96-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.

v.

UNITED STATES DEPT OF JUSTICE, ET AL.

City of Philadelphia
State of Pennsylvania

DECLARATION OF KIYOSHI KUROMIYA

I, Kiyoshi Kuromiya, declare:

1. Since its founding in 1989, I have been Director of Critical Path Project, Inc. and Editor of Critical Path AIDS Project, an AIDS treatment newsletter with a circulation of 10,000 and a suite of electronic services designed to get consistent, accurate and

easy-to-understand AIDS prevention and treatment information out to the field in as short a time as possible and to keep it accurate and complete as well as constantly updated.

2. The Stipulations provide greater detail on the nature of the services provided by Critical Path AIDS Project. This declaration repeats information in the Stipulations only to the extent necessary for this declaration to be coherent.

3. Because we have operated a 24-hour AIDS treatment telephone since 1989, we have years of experience in disseminating complex and sometimes technical treatment and prevention information to lay persons.

4. Critical Path AIDS Project also operates a computer bulletin board system. (BBS).

5. In addition, since May, 1995, Critical Path AIDS Project has been providing a comprehensive AIDS Web page on the World Wide Web. Our web pages during the period February 4, 1996-March 4, 1996 were accessed approximately 98,000 times, averaging 3,300 times per day.

6. Critical Path AIDS Project Web page links directly or indirectly to thousands of databases in all fifty states and many countries, including databases at research institutions. Someone who has accessed the page can look up and retrieve documents from the far reaches of the world, without technically leaving the Critical Path AIDS Project's Web page. The information available in this manner is discussed in the Stipulations.

7. Critical Path also hosts the Web pages of a number of organizations, regional and national: We The People Living with AIDS/HIV of the Delaware Valley, Minority AIDS Project of Philadelphia,

Fight-the-Right Network, ACT UP/Philadelphia, Philadelphia Community Health Alternatives, Prevention Point Philadelphia, PhillyPAWS, From All Walks of Life, AIDS Information Network, AIDS Research Information Center, Californians for Compassionate Use, the Buckminster Fuller Institute, Grassroots Queers, AIDS Services in Asian Communities (ASIAC), Gay and Lesbian Latino/a AIDS Education Initiative (GALAEI, outreach to the Spanish-speaking community and to male and female sex workers), Youth Health Education Project, and others.

8. Critical Path also hosts electronic mail lists, including one for the Fight-the-Right Network, the Interfaith Working Group, and for Penn Consortium (HIV doctors and researchers in the Philadelphia area).

9. Critical Path offers SLIP (Serial Line Internet Protocol) accounts and additional software to users free of charge. The software is described in the Stipulations.

10. Critical Path has developed software interfaces for the huge data resources it makes available. These interfaces are described in the Stipulations.

11. Critical Path AIDS Project has offered its shell account and/or SLIP account users access to a full-feed of some USENET newsgroups

12. In October 1995, Critical Path AIDS Project was getting 10,000 access requests per day from all over the world, including 110 from Finland, for example, and a handful from Estonia, Singapore, and Bolivia. We can provide monthly statistics on this use of all our Internet services by day, by hour, by service, or by page used.

13. Because most cases of AIDS are transmitted through sexual contact, the information must deal with descriptions of risky sexual activity. In order to ensure that readers understand the materials, it often must be written using street or colloquial language rather than clinical language in order to be understood by most lay persons. Further, because AIDS can be transmitted when men have sex with men as well as when women have sex with men, we frankly discuss the types of sexual activities that might put a person at risk for contracting AIDS and how a person might minimize or eliminate the risk of infection from HIV or other sexually transmitted diseases. Thus, our Web page contains or may contain some explicit language and discussion that might be considered "indecent" or "patently offensive" to some individuals.

14. Critical Path encourages frank discussion on matters of illness and sexuality and drug use. We recognize cultural differences which may require different treatments or information for different communities. We recognize issues particular to certain communities, for example Asian-Pacific Islanders in Philadelphia tend to be recent immigrants for whom English is a second language, men-who-have-sex-with-men, and in their 20s. We presume many of them contracted HIV while still in their teens. Providing complete and accurate prevention and treatment information to diverse communities, diverse age groups, diverse language requirements, and diverse social groupings is a challenge. Out of that challenge grew Critical Path's suite of information services.

15. I do not know what "indecent" and "patently offensive" mean. These terms are vague and can be

variably interpreted, in English as well as other languages and cultures. Some people would define all AIDS information as "offensive" or "indecent." Safer sex information must be described candidly for it to be meaningful for many, and that very frankness may be considered by some to be "offensive" or "indecent." I know this to be true from years of experience talking frankly and directly to persons at risk of infection on a 24-hour telephone hotline which we operate. The hotline has received an average of 10 to 15 calls per day since 1989. Discussion of some of the sexual acts, including those acts engaged in by persons of differing sexual orientations, and the preventive measures recommended for people engaging in those acts may be considered by some to be "offensive" or "indecent." I am concerned that the law is now written in such a way that I might face possible criminal prosecution.

16. In my opinion, it is critical that information about AIDS be disseminated as widely as possible, and that it be written in language accessible to all. I believe it is critical that teenagers as well as adults have access to such information. In my view, the information that Critical Path provides saves lives of both teenagers and adults and any attempt to censor or restrict the free flow of this life-saving information would be a critical public health mistake.

17. I believe information provided by Critical Path is now read by teenagers. In addition, we are currently working with the Youth Health Empowerment Project (YHEP), which provides health counseling, outreach and AIDS information to youths. Thus, additional teenagers will be afforded the same level of safer sex information we currently provide the community at large. We will also be hosting a Web page for YHEP on our system.

18. Critical Path on its Home Page alerts its readers that some of the information therein may be upsetting to some readers because it deals with sexually transmitted disease and may be unavoidably sexual or morbid in nature. However, there are many different ways to access the information on our Web site and some of those ways bypass our initial Home Page and thus would bypass the disclaimer.

19. Critical Path understands that the CDA provides a defense for "good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors" to "indecent" or "patently offensive" communications. Critical Path knows of no way to restrict or prevent access to "indecent" or "patently offensive" material because: 1) We do not know what "indecency" and "patently offensive" means, and we do not know whether any of our information falls within these definitions, and 2) We have no way of knowing with any certainty the name, age, nationality, or other characteristics of individuals or groups of individuals who use our electronic services. We believe that individual users and organizations who use our services to communicate online are unable to avail themselves of the defense for the same reasons. They are all non-commercial organizations and individual speakers, the vast majority of whom lack the legal acumen needed to make judgments about the legality of their speech, and who lack the technical skills and money needed to develop a system that might verify the age of those with whom they speak.

20. Without drastically changing the way the Internet currently operates, any attempt to screen "indecent" or "patently offensive" material from web sites, online mailing lists, bulletin board systems,

newsgroups, or chat rooms would automatically reduce the content of adult speech on safer sex and AIDS treatment issues in those forums to speech suitable for minors, and probably fail to communicate useful information.

21. Critical Path understands that the CDA also provides a defense if the speaker restricts access by "requiring use of a verified credit card, debit account, adult access code, or adult personal identification number." Such a system would be inconsistent with the mission and purpose of Critical Path AIDS Project because: 1) we function as an AIDS information provider for teenagers; 2) we provide anonymity for all our users to help them maintain confidentiality and privacy when accessing our information; and 3) all of our services are free.

22. First, because AIDS is a sexually transmitted disease and because many teenagers are sexually active, including two thirds of all students before leaving high school, we feel it is important to provide AIDS prevention and treatment information to all individuals who seek us out—whether they are adults or teenagers. In March 1996, the President's Office of National AIDS Policy reported that the rates of HIV transmission among teenagers show phenomenal growth even as rates among gay white adults level off. One quarter of all new HIV infections in the U.S. are estimated to occur in young people between the ages of 13 and 20. That means that two Americans under the age of 20 become infected with HIV every hour of every day. And, worldwide, more than seven million persons between the ages of 15 and 24 have already been infected with HIV. A recent survey of gay male teenagers showed that teenagers in underserved communities, particularly Asians, Latinos and Latinas,

and African Americans show HIV prevalence rates from 6% to 10% and rapid growth. Age verification would defeat the purpose of our AIDS prevention outreach programs and discussions to teenagers.

23. Second, because AIDS and its several routes of transmission are stigmatized by society in this country and abroad, it is important that we preserve anonymous access to this information. To protect the identity and privacy of our users, we permit those on our system to use "handles" rather than their real names. The Internet is particularly suitable for providing access to AIDS information privately and confidentially—to sexually active teenagers; intravenous drug users and former drug users; homosexuals, heterosexuals, and bisexuals; male and female sex industry workers; hemophiliacs; and persons not infected with HIV. It is vital to our user-base that our users' confidentiality is not violated. We also strictly abide by the Pennsylvania Act 148 of 1990, the "Confidentiality of HIV-Related Information Act." As operators of this system, it would be a violation of confidentiality and privacy for us ever to read person-to-person online communication through e-mail unless it is specifically addressed to us. We have no way of monitoring or qualifying in any way the high volume of e-mail that passes through our system. Because most of our users demand anonymity on our system when speaking themselves and when accessing information, we would lose them if some kind of personal identification were required in order to verify age.

24. Third, we currently provide all of our electronic services for free, both to individuals and organizations. Most of our users come from underserved communities which have been hardest hit by

the AIDS pandemic. We strongly believe that cost should not be a barrier between our users and life-saving AIDS prevention and treatment information.

25. Even if an age verification system were consistent with our mission, it would require a vast technical overhaul and major changes to the way online communication currently takes place.

26. Applying my knowledge of the way that e-mail, mailing lists (or listservs), Usenet newsgroups, and chat rooms currently function, I believe that the CDA defenses are simply not available to Critical Path and its users when they communicate through these kinds of online forums. There is no way to screen the volume of traffic from a multiplicity of access points; it is not possible or reasonable to monitor private conversations anymore than the phone company could monitor all phone conversations that take place within its system. And fundamentally, we believe teenagers are entitled to the same quality of safer sex information as adults.

27. Critical Path receives dozens of e-mail information requests daily, mostly from strangers of whom we have no personal knowledge. We have no way of verifying the age of those who request our information by e-mail, and we know of no age verification system we could implement for e-mail. (Such a requirement would be similar to requiring that we verify the age of every person to whom we provide information by phone.) Similarly, users of our free Internet e-mail accounts have no way of verifying the age of the persons with whom they communicate by e-mail.

28. Currently, Critical Path hosts and administers several moderated and unmoderated online mailing lists in which people communicate about various

issues regarding AIDS/HIV and its treatment. The administrators and moderators of these mailing lists have no way of knowing the identity, age, or any other characteristics of the subscribers who will read postings to the list. Subscriptions and cancellations of subscriptions are processed entirely automatically by our listserv software.

29. Speakers who post messages to the lists also have no method of identifying the age, gender, or other characteristics of the other subscribers who will read his or her message. When Critical Path, or any other speaker, posts a message to the list, the message is automatically distributed to all of the other subscribers on the list.

30. Critical Path currently offers our online users access to approximately 6,000 USENET newsgroups on a variety of subjects as part of our free Internet access services. Anyone in the world with access to Usenet can post a message on a particular topic at any time, and any other user with access to Usenet can read (and reply to, if desired) the message at any time. The number of potential speakers or readers of any particular message posted to Usenet is the entire number of online users with access to Usenet—literally millions of online users. Critical Path simply has no way of verifying the age of the recipients of the nearly 2 gigabytes of Usenet newsgroup postings which pass through our system each and every day. To do so would be the equivalent of monitoring 152 million words of text (three sets of the Encyclopedia Brittanica) or 5,000 book-length documents the equivalent of which is posted to Usenet every day of the year including weekends and holidays. Similarly, Critical Path users who post messages to Usenet

have no way to determine the age or other characteristics of persons who read their messages.

31. Although Critical Path does not currently operate chat rooms for simultaneous online conversation on a particular subject, we plan to implement such areas on AIDS treatment and on safer sex issues in the future. While the technology will allow speakers in a chat room to know the number of other participants in the "room," there will be no way for Critical Path or for speakers in the room to determine the real name, age or other characteristics of the participant.

32. In the field of AIDS, support groups are widely used and have been found to be an effective means of engendering trust and providing valuable (sometimes lifesaving) information and emotional support in a protected environment of confidential communication. Chat rooms and oline BBS discussions can serve some of these functions on the Internet.

33. While the age verification defense in the CDA might be technologically *possible* for the Critical Path web site, it is both technically infeasible and a severe economic burden to our non-commercial web site.

34. Critical Path understands that it would be possible to set up a system so that users of the Critical Path web site would be required to insert a credit card number before they gained access to the web site. We do not have a commercial relationship with our users, and we do not want to require our users to supply us with commercial information before they can access our free material. Requiring a credit card would exclude huge numbers of our adults in this country and abroad who do not have credit from speaking and accessing information online. Critical

Path now gets approximately 500 overseas accesses from 61 countries each day. Some people overseas have *no other access* to accurate information on AIDS/HIV.

35. Mandating any other kind of adult access code or personal identification number would require our users to send us pre-registration information before they could gain access to our services or speak online. Critical Path does not have the staff, the equipment or ability to operate a pre-registration system, since up to 99% of our users reach our web page and our other internet services from access points beyond our control, and these access points are often abroad. Further, we would lose much of our user-base because a user could not maintain anonymity through such a registration process and we could no longer assure our users of confidential access to AIDS treatment and prevention information.

36. Even if a credit card verification system were technically feasible for the Critical Path web site, creating such a system would be a tremendous economic burden, given our limited resources. We have only one full-time employee and a small budget of approximately $100,000 per year. Based on the current cost of credit card verification, which is approximately $1 per verification transaction, our web page alone would cost us up to twice our entire annual budget each month simply to verify ages. The cost would force us to shut down our operation, with an accompanying loss to our community of peer-operated public health services for people with AIDS and people at high risk for contracting AIDS.

37. Other age verification systems for our web site that would require an advance registration process would also be a tremendous economic burden, as they

would require additional employees and resources to process the registration information for every online user and to keep an updated database of information in case of investigation. Critical Path has one full-time and one part-time employee. Such a system would require us to hire dozens of additional employees to attempt to verify ages for the 10,000 individuals who use our Internet services each day.

38. In contrast to our Web site, I do not know of any technical way for online users of Critical Path's e-mail services, mailing lists, Usenet newsgroups, or chat rooms to verify the age of those with whom they speak. Even if such a system were to be developed, it would be tremendously burdensome economically to our non-commercial speakers, many of whom come from economically deprived communities and do not have credit cards.

39. Even if age verification were not technically infeasible (if not impossible) and economically burdensome, Critical Path and its users would have the additional economic burden of dividing all communications into two types—those that are "indecent" or "patently offensive" and those that are not. This would essentially require creation of two Critical Path web sites—one for adults, and one for minors. The impact on individual users would be to deprive them of full access to parts of documents and therefore we would have to restrict access to entire documents because we would not know which sentences should go in the restricted areas. The documents as a whole would discuss issues of sexual practices and how to avoid risky behaviors and, if excerpted, would provide insufficient (and possibly unclear) information.

40. In addition, our Critical Path AIDS Project web page links directly to several hundred other web sites and indirectly to many thousands of sites. We have no control over the content in those sites, and our one full time employee could not possibly review the vast amount of content available in all these linked sites. Yet to sever the links to these other web sites would destroy one of the most popular and useful features of the web—the ability to gather information from a wide variety of sources through the linkage of related documents and sites.

41. Critical Path encourages the copying, republishing, and re-posting of information on our Web page. Because we have no control over the context or the integrity of the content when it is re-posted, we are concerned because the CDA is unclear whether the original creator of the information could be held criminally liable if the information is re-posted in a way that could be interpreted as "patently offensive."

The Kuromiya exhibits provide accurate copies of pages I personally downloaded from Critical Path AIDS Project during the week of March 11,

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of March, 1996

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Kiyoshi Kuromiya

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 96-963

AMERICAN CIVIL LIBERTIES UNION, ET AL.

v.

JANET RENO,
ATTORNEY GENERAL OF THE UNITED STATES

No. 96-1458

AMERICAN LIBRARY ASSOCIATION, INC., ET AL.

v.

UNITED STATES DEP'T OF JUSTICE, ET AL.

SUPPLEMENTAL
DECLARATION OF ROBERT B. CRONEBERGER

I, ROBERT B. CRONEBERGER, pursuant to 28 U.S.C. § 1746, declare:

1. Since 1986, I have been Director of the Carnegie Library of Pittsburgh. I submit this declaration in support of the complaint in this action and the plaintiffs' motion for injunctive relief against provisions of the Communications Decency Act of 1996 (the "Act").

2. The Stipulations provide greater detail on the Library and the nature of the services we provide. This declaration repeats information in the Stipulations only to the extent necessary for this declaration to be coherent.

3. I have Bachelor of Arts and Master of Arts degrees in Classical Languages, and received my Master of Library and Information Sciences degree from Drexel Institute of Technology in 1962. For eight years, I held various positions with the Library of Congress; part of my responsibilities included working on the Library's development of electronic cataloging. I later spent nine years, first as Deputy Director, and then Director, of the Memphis & Shelby Public Library and information center in Memphis, Tennessee. Thereafter, I served almost two years as State Librarian and Archivist for the State of Tennessee, before assuming my current position.

4. I have been a member of the American Library Association ("ALA") for years, and have served on various ALA boards and committees, including the Intellectual Freedom Committee. I am currently a member of the ALA's Legislation Committee. At the state level, I am a member of the Pennsylvania Library Association. In addition, I am active in many local organizations, including the Greater Pittsburgh Literacy Council, of which I have been President, and the Commission on the Future of Libraries in Allegheny County. I have authored or co-authored several articles in my field, conducted numerous workshops, and engaged in extensive consulting and lecturing, and teaching as an adjunct faculty member at the School of Library and Information Science at the University of Pittsburgh.

5. A copy of my most recently prepared curriculum vitae is marked as Plaintiffs' Trial Exhibit 280.

6. Through my educational studies, work experience and professional activities, I have gained comprehensive knowledge regarding the activities, practices, and policies of libraries—large and small—across the country.

7. Carnegie Library of Pittsburgh has one main building, 18 branches, one library for the blind and disabled, and several bookmobiles. All our physical locations are within Pittsburgh. We serve as the district library for all public libraries in Allegheny County, Pennsylvania, and, and will soon become the college library for a four-year college in downtown Pittsburgh that is consolidating its library with ours. We also serve as a state resource library for the State.

8. We currently have about 6 million items in our collection. Two million of these are listed in our online catalog and include: CDs and records, journals, films, books and other material in electronic format. The other 4 million are comprised of such material as government documents, microfiche, slides, individual periodical and journal issues, and patent-related material.

9. Library cards for the Carnegie Library are issued, free of charge, to anyone in Allegheny County. The card entitles the cardholder to borrow from the library's collection, as well as to access, through us, materials from academic, special, and public libraries throughout the world. We currently have approximately 277,000 cardholders, of whom about one-third are minors.

10. As Director, I serve as the CEO of the Carnegie Library, overseeing all operations of the

institution, including its partnerships with other institutions. We have 580 employees, twenty of whom work in our automation department.

11. It is the mission of the Carnegie Library of Pittsburgh to provide the widest array of information to the widest possible audience—both adults and minors. To that end, the library makes no distinctions between patrons on the basis of age. The library does not offer separate library cards for adults and children and the library does not place restrictions on what minors can read, use or borrow in the library. Those same principles recently were extended to electronic access of library information. Carnegie Library of Pittsburgh is committed to offering its patrons—both adults and children—access to information on the Internet. Our service philosophy is based on the principle that only parents have the right to restrict materials, and only for their own children. The library's Board recently unanimously adopted the ALA's "Access to Electronic Information, Services and Networks: an Interpretation of the LIBRARY BILL OF RIGHTS," a copy of which is marked as Plaintiffs' Trial Exhibit 233.

12. The Carnegie Library of Pittsburgh's mission is based on the intellectual principle that an informed citizenry is essential to a democracy. However dangerous specific thoughts, ideas or expressions might be to a society, it is far more dangerous to suppress or withhold these expressions to the society which must confront them. Age must not be a restriction imposed by anyone except the parent of a child, who can judge the maturity of that child. The quality of writing is based not on its ability to idealize or lecture, but on its ability to reflect and confront reality.

13. The Carnegie Library of Pittsburgh has two servers connected directly to the Internet by a T1 line: http://www.clpgh.org and http://trfn.clpgh.org ("The Three Rivers FreeNet"). The Library's web sites on these servers are open to anyone on the Internet. We do not restrict access in any way, and do not charge any access or user fee.

14. The library makes computers (PCs) available at each of its locations for use by patrons. We are also implementing a new program of installing PCs in public housing communities in the city. Individuals can access sites on our servers as well as the Internet using this equipment. Patrons can also call into our servers from their home computers. In addition, the library is in the process of hooking up 38 other public libraries in the region to our computer system.

15. At our online sites, the Library offers patrons the library's catalog, various information lists, news about current events, and numerous publications. For example, the Carnegie Library of Pittsburgh posted on the Three Rivers FreeNet the text of a study entitled *Marketing Pornography on the Information Superhighway: A Survey of 917,410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times by Consumers in Over 2000 Cities in Forty Countries, Provinces, and Territories* prepared by Martin Rimm, Principal Investigator.

16. Our catalog is posted at our Web site to permit patrons to search the collections available at the library and request material from the library; we do not maintain a physical card catalog. Some titles may contain language that members of some communities might find "indecent" or "patently offensive" for minors. For example, the following titles might be considered "indecent" or "patently offensive" for minors by some persons: (1) *So Fucking What?* by A.M. Wellman (Random House, 1990); and (2) *The Ice Opinion: Who Gives a Fuck?* by Ice-T (as told to Heidi Siegmund) (St. Martin's Press, 1994). Similarly, the following music titles might be considered "in decent" or "patently offensive" for minors by some persons: "Fuckin with my head"; "Soul sucking jerk"; "Mutherfuker"; "Get off my dick and tell yo bitch to come here." Often catalog titles are accompanied by abstracts or descriptions of the particular item's contents. These descriptions too might be considered by some to be "indecent" or "patently offensive" for minors. For example, the online catalog entry for Erica Jong's book *The devil at large* includes the following chapter title description of the book's contents: "Crazy cock in the land of fuck." These titles and descriptions can be found at our Web site. Copies of the catalog entries are marked as Plaintiffs' Trial Exhibits 201, 202, 274, 275 and 276. These are popular titles in our collection. In fact, the book by Ice-T and the rap-music CDs are particularly popular with teenagers. To remove that material from our online catalog would be a disservice to our young patrons.

17. Despite the fact that I have reviewed the Act, I cannot determine whether the Carnegie Library could be criminally prosecuted under the Act for placing these titles in the catalog available on our Web sites or for making the Rimm study available. Judging from the finding that George Carlin's use of the "seven dirty words" was found to be indecent, it would appear that the use of such slang language for sexual activities, sexual organs, and excretory functions is covered by the Act. Yet, it would be

antithetical to our mission as a library to remove this information from our Web site, or to restrict access to this information.

18. I am familiar with the provisions of the Act. The terms "indecent," "patently offensive," and "contemporary community standards," as used in the Act, are vague. I have no clear understanding of what materials would be considered "indecent" or "patently offensive" for minors by some communities, or whether the Act provides a defense for materials with serious literary, artistic, educational or scientific value. It also is unclear which community standards govern the interpretation of whether content posted on the Internet is "indecent" or "patently offensive." Further, I cannot discern whether the Act applies where the person displaying material deemed "indecent" or "patently offensive" had the intent to be patently offensive or simply had the intent to display the material later found objectionable.

19. The uncertainty as to what "community standard" controls is particularly troubling for libraries.

The Carnegie Library serves a relatively conservative community; therefore, what may be deemed appropriate for minors by some in New York City is not likely to be subject to the same parameters as what is deemed appropriate in the greater Pittsburgh area. But, even within this regional area, there are very different "communities," drawn together not just by ethnic and cultural bonds, but by common religious and aesthetic principles, as well. It is my experience that each community may have a very different sensibility concerning minors' access to reading materials.

20. In my experience, the materials in libraries most often challenged by members of the community

are those challenged on the grounds they are inappropriate for minors. Recently, parents have sought to remove two award-winning children's books from a local school curriculum because the content was thought inappropriate—*A Bridge to Terabithia* and *Julie and the Wolves*. In my capacity as a member of the ALA's Intellectual Freedom Committee, I am very familiar with communities' attempts (some successful) to ban classic works of literature, on the grounds those books contain material inappropriate for minors. A compilation of books recently challenged or banned is marked as Plaintiffs' Trial Exhibit 227.

21. Whatever community standard governs, it is conceivable our posting of the *Marketing Pornography on the Information Superhighway* could pose a risk of criminal prosecution under the Act. There are many questions regarding the validity of this study but since it served as the basis of "On a Screen Near You: Cyberporn"—the July 3, 1995 *Time* cover story article by Philip Elmer-Dewitt, the Carnegie Library believed it was important to make it available for research and analysis. The study has been accessed by many users seeking both to defend and to refute its thesis. The study contains vivid descriptions of the sexual images the study's investigator found. An excerpt is marked as Plaintiffs' Trial Exhibit 203.

22. Carnegie Library also posts online journals and journal abstracts, including such popular magazines as Cosmopolitan, Playboy, and Vanity Fair. Many of these appear on our Web sites in full text. The Library is concerned that articles and images in these magazines may be deemed "indecent" or "patently offensive" for minors by some persons.

23. We are committed to keeping the above-referenced materials, and similar materials, available at our Internet sites, although we obviously are concerned about criminal prosecution and realize that such a risk exists. It would be contrary to our mission to remove these materials from our Web sites. If the Act is not enjoined, the Library might be forced to remove these titles, the study, and similar from its online sites, despite the fact that these materials offer our patrons valuable information.

24. Users who access our Web sites can link to other Web sites and the Internet. We can ascertain which site a user first links to after leaving our sites, but nothing thereafter. Therefore, to the extent the Act seeks to obligate the Library to monitor and/or control what Internet content users access through our servers and Web sites, we cannot, as a technical matter do so.

25. I understand that the Act provides a defense to a library or librarian if steps have been taken to ensure that only individuals eighteen or older have access to the Library's online sites. I have discussed this option with our computer staff and we have concluded that it would be technically difficult and economically infeasible for the Carnegie Library of Pittsburgh to establish a system to block access by individuals under the age of eighteen. Many of our users connect to the system by telephone, and there is no easy method by which to determine the age of the user.

26. I asked my computer staff to investigate the potential costs to the Library if it were forced to create an "adults only" site or sites on our servers, pre-register Internet patrons, monitor access to the

sites, and evaluate the materials that would need to be segregated. The costs would be astounding.

27. I understand that the Act permits "verified credit card identification" of Internet users who wish to access our online sites. My staff has discussed the feasibility of this option with PNC Bank, with whom we have a VISA/Mastercard relationship because affiliated organizations sometimes charge for attendance at lectures and concerts held at the Library. We were informed that there currently is no way for the bank to verify credit card identification in contexts, such as ours, that are unrelated to purchases, and the bank was not interested in providing such services. The bank indicated that it had no way to determine how much it would cost to set up such a service or how much it would cost per "verification." We know of no already established means of identifying online adult users by access number or other identifier; thus, Carnegie Library would be forced to develop its own user identification system in order to avail itself of the Act's defenses.

28. To our knowledge, there is no existing software available that would enable us to pre-screen users of our online sites. Potential users will be forced to pre-register with Carnegie Library if they wish to access information posted on our sites, and prove they are 18 or older. We would have to hire at least 15 new staff members, at an annual cost of $ 195,000 simply to enable us to complete this task of pre-registration of just existing cardholders.

29. But it is not simply cardholders that utilize our Web sites. Assuming only individuals from Allegheny County utilized our sites, we would need an 65 additional staff members to pre-register and maintain

data files for this local 1,300,000 population. The cost would be about $ 845,000.

30. Of course, the information on our online sites now is accessed by people all over the world. Information gathered by my staff shows that users from across the globe—including, for example, Guam, the United Arab Emirates, Argentina, Finland, Indonesia, Morocco, and Japan—have accessed our Internet sites. We have no way of knowing who they are, let alone how old they are. If an identification system had to be installed, these people would need to contact Carnegie Library, verify their age and pre-register for access to our sites. Given the difference in time zones, the Library would be forced to maintain a 24-hour staff to adequately serve potential users of our site. The beauty of Internet availability of information is that users can access that information at any time at their convenience or when an urgent need for the information arises. They are not tied to library hours. If Carnegie Library is to fulfill its mission as a provider of information, a 24-hour Internet staff will need to be maintained. This will add additional costs.

31. My computer staff has advised me that it would cost roughly $30,000 to purchase or create software that would review our online material and attempt to select out "keywords" that might signal that the information could potentially be deemed "indecent" or "patently offensive" by some community standards. However, this system would not be foolproof and would be both underinclusive (not finding all the potentially problematic material) and overinclusive (capturing too much material). Sex-related terms, for example, will segregate sex education and sexually related medical material. We have concluded, therefore, that any segregation of our online materials into

acceptable and potentially inappropriate for minors categories would have to be done by hand, using human judgment (presumably, with the assistance of legal counsel). In order to avoid potential criminal liability, any reviewer would have to err on the side of overinclusion in segregating out "adults only" material.

32. We currently have over 2 million items in our catalog. The titles of those items, and often abstracts explaining the contents of the materials, appear in our online catalog. The catalog information is most often drawn directly from descriptions used by the Library of Congress. It is our estimate that we would have to hire 180 additional staff to complete the task of reviewing all these titles and abstracts and determining whether they could be deemed "indecent" or "patently offensive" to minors by some community standard, at a cost of approximately three million dollars.

33. Carnegie Library adds tens of thousands of new titles to its collections each year. In 1995, for example, we added 38,517 cataloged items and over 46,000 paperbacks, standards, microfiche, maps and other formats to our collections, and, in addition, checked in 26,136 periodicals at our main library and over 24,000 at our branch libraries. If we had to check each table of contents, title, notes and headings (the things that we post online), it would take 1,496 days of work annually. This would require the addition of six full time staff members per year, at a cost of approximately $100,000.

34. In addition, we would have to hire the necessary legal and other staff, or engage outside counsel, to constantly monitor application of and developing legal precedents in connection with the Communica-

tions Decency Act. As prosecutions under the Act are pursued, new evaluations of these millions of our online titles, abstracts and materials would have to be made.

35. As of this time, Carnegie Library offers online 3,000 journals and 1.5 million abstracts. A listing of these items is marked as Plaintiffs' Trial Exhibit 279. Some of these items are also published in hardcopy; some are available only online. These materials are delivered to us online; we do not receive hard copy. These journals and abstracts would have to be reviewed in their entirety by staff to determine if they were, even in part, potentially "indecent" or "patently offensive" for minors. I would need to hire approximately 25 staff, at an annual cost of $ 625,000 to monitor and review these materials for compliance with the Act. We anticipate that a growing number of materials will be provided by the Library online, and that an ever increasing number of journals and other materials will be posted by us in full text. Thus, these costs will almost certainly increase in the future.

36. We have also posted the Rimm study on our sites, the Three Rivers FreeNet. Because of its explicit sexual content, that study would need to be moved to an "adults only" section of our Web site in order to avoid potential liability under the Act. We can tell from our data records that about 176 people a day access that study on our site; about 3,000 people a day—or one million a year—access the Three Rivers FreeNet. In the 32-day period ending March 12, the Rimm study has been available online at our site, people from 76 countries accessed the study, as evidenced by Plaintiffs' Exhibits 277-278.

37. We are spending ten million dollars to install our present technology system, which was custom designed by our technology staff with the assistance of outside commercial consultants. My staff advise me that this system simply could not handle registration of all the individuals (based on our experience thus far) who would annually access our Three Rivers FreeNet.

38. The Three Rivers FreeNet is the only freenet system in the country owned and operated by a library. My experience in working with other freenet systems is that the most frequent activity that renders such systems economically infeasible, and eventually shuts them down, is the exorbitant cost of registering and maintaining all the e-mail addresses of those who use the system. And that simple registration process does not involve the type of identity and age verification the Act contemplates.

39. In our role operating the Three Rivers FreeNet, we assist other local social service organizations in creating and posting their own Web sites on the FreeNet. We provide this service—both our assistance and space on our server—free of charge. We are concerned that our involvement in this activity potentially exposes us to criminal liability if any of the material those individuals include on their sites is found to be "indecent" or "patently offensive" for minors. And it is entirely unclear to us whether the so-called "access defense" would be available to us, especially given our involvement in the process.

40. Many freenets include on their servers local discussion groups on many different topics that permit users to engage in online discussions in "real time." We have not yet added such groups to the Three Rivers FreeNet, but are considering doing so

in the future. However, potential liability for the content of such discussions under the Act gives us grave concern and the outcome of this case will affect whether we add that communications feature to our service.

41. It is my best estimate, based on the information provided by the Library's computer staff and our evaluation of the provisions of this Act, that Carnegie Library would need to add 291 staff members and to allocate approximately $4,795,000 to devise a segregation and identification system that would prevent minors under the age of eighteen from accessing "adults only" information. Obviously, such a system could not be foolproof. Despite elaborate mechanisms to pre-register users of the Internet, we still would be unable to discern, with any degree of certainty, the age of any particular caller. Obviously, the resourceful minor could secure a parent's or other relative's user identification number and still dial in to our system. There is no technology known to us that the library could develop to prevent such circumvention of a user identification system.

42. Carnegie Library of Pittsburgh serves a major metropolitan area. The Library's 1996 operating budget is approximately $ 16 million; our materials budget is currently $1,600,000. We are funded by a regional asset district. Funds are drawn principally from a county sales tax, with supplementation by other city and county taxes. In addition, we obtain gifts and grants. Our budget is used fully to support our current library services. There are no discretionary funds that would cover the costs of the segregation and identification systems and additional staffing discussed above. Our current budget could not be used to finance the type of elaborate segregation and identification systems and staffing necessitated by the Act.

43. I do not believe that Carnegie Library could raise the additional funds to develop and staff an adequate segregation and identification system that would comply with the Act and insulate Carnegie Library from the risk of criminal prosecution. If the Act is not enjoined as unconstitutional, the only alternative would be to remove material from the Internet if there was any potential risk of prosecution. From our perspective, that is an unacceptable alternative. That choice would be counter to our objectives and abhorrent to us as providers of information. Otherwise, Carnegie would have to divert huge amounts of funding from other important library projects. In either case, the library would be reducing the availability of information to its patrons—both adults and minors.

44. Compliance with the Act is economically infeasible for the Carnegie Library. Based on my knowledge and experience, I believe the costs simply could not be borne by smaller libraries with smaller budgets.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 19 day of March, 1996.

Robert B. Croneberger

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 96-963-M

AMERICAN CIVIL LIBERTIES UNION, ET AL., PLAINTIFFS

v.

JANET RENO, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
DEFENDANT

Civil Action No. 96-1458

AMERICAN LIBRARY ASSOCIATION, ET AL., PLAINTIFFS

v.

DEPARTMENT OF JUSTICE, ET AL., DEFENDANTS

[Philadelphia, Pennsylvania
April 15, 1996
9:31 o'clock a.m.]

HEARING BEFORE:
THE HONORABLE DOLORES K. SLOVITER
CHIEF JUDGE

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

THE HONORABLE RONALD L. BUCKWALTER
THE HONORABLE STEWART DALZELL
UNITED STATES DISTRICT JUDGES

APPEARANCES:

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[Testimony of Dan Olsen]

[25]

* * * * *

Q Well, let me just pick up on Judge Dalzell's question. If U.S. sites were tagged—if U.S. sites tagged their [26] speech using a Minus L18 approach, as you suggested, would it be easier or more difficult for the Surfwatches and other blocking software to search for foreign sites to block?

A Okay, if for example the CDA were upheld and people used tagging or some other mechanism to take

care of that, that means now that the other 60 percent, using your 40 percent figure, the other 60 percent is now no longer of interest to Surfwatch and Netnanny and they can now concentrate on the 40 percent, which is a smaller problem.

Q And based on your knowledge and experience of the Internet do you believe that the U.S. sets a leadership role on standard setting that would influence the behavior of foreign speech providers on the Net?

A In a technical sense, yes, most of the standards that exist on the Internet were begun in the U.S. Some of them, for example the Worldwide Web, began elsewhere, but generally the U.S. has a leadership role technically.

* * * * *

[31]

Q In your opinion, Dr. Olsen, is there any technical problem with other types of third-party registration services catering to non-pornographic sites arising on the Internet?

A Yes. If Mr. Hansen's clients didn't like that particular neighborhood they could form their own version of Adultcheck and have a nicer neighborhood.

[32]

Q Your testimony is that there is not a technical problem?

A There is not a technical problem, they could do exactly what Adultcheck did.

* * * * *

1. Section 509 of the Communications Decency Act of 1996, Pub. L. No. 104-104, 110 Stat. 137, provides:

SEC. 509. ONLINE FAMILY EMPOWERMENT.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

"(a) FINDINGS.—The Congress finds the following:

"(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

"(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

"(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

"(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

"(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

"(b) POLICY.—It is the policy of the United States—

"(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

"(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

"(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

"(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

"(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

"(c) PROTECTION FOR 'GOOD SAMARITAN' BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.—

"(1) TREATMENT OF PUBLISHER OR SPEAKER.—No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

"(2) CIVIL LIABILITY.—No provider or user of an interactive computer service shall be held liable on account of—

"(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

"(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

"(d) EFFECT ON OTHER LAWS.—

"(1) NO EFFECT ON CRIMINAL LAW.—Nothing in this section shall be construed to impair the enforcement of section 223 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

"(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

"(3) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

"(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.—Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

"(e) DEFINITIONS.—As used in this section:

"(1) INTERNET.—The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

"(2) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"(3) INFORMATION CONTENT PROVIDER.—The term 'information content provider' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"(4) ACCESS SOFTWARE PROVIDER.—The term 'access software provider' means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

"(A) filter, screen, allow, or disallow content;

"(B) pick, choose, analyze, or digest content; or

"(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.".

2. Section 561 of the Communications Decency Act of 1996, Pub. L. No. 104-104, 110 Stat. 142, provides:

SEC. 561. EXPEDITED REVIEW.

(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

Supreme Court of the United States

No. 96-511

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

AMERICAN CIVIL LIBERTIES UNION, ET AL.

APPEAL from the United States District Court for the Eastern District of Pennsylvania.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

December 6, 1996